Commerce of the United States of America; to the Committee on the Judiciary.

Also, petition of the board of agriculture of the State of Connecticut, protesting against the passage of any legislation reducing the present tax on oleomargarine; to the Committee on Agriculture.

By Mr. TOWNER: Petition of the Woman's Christian Temperance Union and 300 citizens of Allenton, Iowa, favoring the passage of the Kenyon "red light" injunction bill to clean up Washington for the inauguration; to the Committee on the District of Columbia.

By Mr. WICKERSHAM: Petition of residents of Ketchikan, Alaska, favoring the passage of legislation to prevent the setting of fish traps in the tidal waters of Alaska; to the Committee on the Territories.

SENATE.

WEDNESDAY, *January 8, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore (Mr. BACON) laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, authentic copies of the certificates of ascertainment of electors for President and Vice President appointed in the States of South Dakota and Washington at the elections held in those States November 5, 1912, which were ordered to be filed.

CONTINGENT EXPENSES, TERRITORY OF ALASKA (S. DOC. NO. 995).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting a letter from the Secretary of the Interior submitting a revised estimate of appropriation for contingent expenses, Territory of Alaska, for the fiscal year ending June 30, 1914, in the sum of $9,745, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

HANOVER BAPTIST CHURCH OF VIRGINIA V. UNITED STATES (S. DOC. NO. 996.)

The PRESIDENT pro tempore laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact and conclusion filed by the court in the cause of the Trustees of the Hanover Baptist Church, of King George County, Va., *v.* United States, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

IMPEACHMENT OF ROBERT W. ARCHBALD.

Mr. CLARK of Wyoming. I introduce the order which I send to the desk.

The PRESIDENT pro tempore. The order will be read.

The order was read, as follows:

Ordered, That on this day, and until otherwise ordered, the daily sittings of the Senate in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall commence at 1 o'clock in the afternoon and continue until 6 o'clock in the afternoon.

The PRESIDENT pro tempore. Without objection, the order will be considered as made by the Senate.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented the memorial of Rev. James A. McFaul, bishop of Trenton, N. J., remonstrating against the adoption of the proposed literacy test for immigrants, which was referred to the Committee on Immigration.

Mr. KERN presented a resolution adopted by the Indiana conference of the Methodist Episcopal Church, in session at Jeffersonville, Ind., favoring the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. WARREN presented resolutions adopted by the Fremont County Wool Growers' Association, of Wyoming, favoring the enactment of legislation authorizing cooperation with the several States for the extermination of wild predatory animals, which were referred to the Committee on Agriculture and Forestry.

Mr. OLIVER presented a petition of sundry citizens of Penns Park, Pa., and a petition of members of the Erie Methodist Episcopal Conference, of Erie, Pa., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. JOHNSON of Maine (for Mr. GARDNER) presented petitions of members of the Men's Bible Class of the Free Baptist Church, Island Falls; of members of Cumberland District Lodge of Good Templars, of Portland; and of sundry citizens of Farmington, South China, and North Anson, all in the State of Maine, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a memorial of sundry citizens of Portland, Me., remonstrating against the enactment of legislation to further restrict immigration, which was referred to the Committee on Immigration.

Mr. WETMORE presented a petition of members of the Rhode Island State Federation of Women's Clubs, praying for the passage of the so-called Page vocational education bill, which was ordered to lie on the table.

AGRICULTURAL ENTRIES ON COAL LANDS.

Mr. CLAPP, from the Committee on Indian Affairs, to which was referred the bill (S. 7976) to amend section 1 of an act entitled "An act to provide for agricultural entries on coal lands," approved June 22, 1910, asked to be discharged from its further consideration and that it be referred to the Committee on Public Lands, which was agreed to.

THE JUDICIAL CODE.

Mr. CLARK of Wyoming. Under the direction of the Committee on the Judiciary, and pursuant to law, I submit from that committee the Judicial Code of the United States in force January 1, 1912, annotated; and in connection therewith I report a concurrent resolution providing for the printing of the code, which I ask may be read, and, together with the manuscript, referred to the Committee on Printing.

The concurrent resolution (S. Con. Res. 34) was read, and, with the accompanying manuscript, referred to the Committee on Printing, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed 25,000 copies of the Judicial Code of the United States prepared under the direction of the Judiciary Committee of the Senate, 10,000 copies of which shall be for the use of the Senate and 15,000 for the use of the House of Representatives.

BILLS AND JOINT RESOLUTION INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BORAH:

A bill (S. 8021) extending the number of annual payments to entrymen upon reclamation projects; to the Committee on Irrigation and Reclamation of Arid Lands.

A bill (S. 8022) granting an increase of pension to Harman Eastman (with accompanying paper); and

A bill (S. 8023) granting a pension to Mary Coleman (with accompanying paper); to the Committee on Pensions.

By Mr. KERN:

A bill (S. 8024) granting an increase of pension to Wilson Wells (with accompanying papers); and

A bill (S. 8025) granting an increase of pension to Edward W. Anderson (with accompanying paper); to the Committee on Pensions.

By Mr. TOWNSEND (for Mr. SMITH of Michigan):

A bill (S. 8026) granting a pension to Allen B. Be Dell; to the Committee on Pensions.

A bill (S. 8027) to remove the charge of desertion from the military record of Henry Fuller; to the Committee on Military Affairs.

By Mr. BURNHAM:

A bill (S. 8028) for the relief of the legal representatives of the estate of Henry H. Sibley, deceased; to the Committee on Claims.

By Mr. CATRON:

A bill (S. 8029) for the relief of Frank L. Rael, heir of Francisco Rael, deceased; to the Committee on Claims.

By Mr. SWANSON:

A bill (S. 8030) for the construction of a public building at Warrenton, Va.; to the Committee on Public Buildings and Grounds.

By Mr. O'GORMAN:

A bill (S. 8031) providing for the presentation of medals to all surviving soldiers of the Battle of Gettysburg; to the Committee on Military Affairs.

By Mr. JOHNSON of Maine:

A bill (S. 8032) for the relief of Walter Whitney (with accompanying papers); to the Committee on Military Affairs.

By Mr. BRANDEGEE:

A bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut; to the Committee on Commerce.

By Mr. GALLINGER:

A joint resolution (S. J. Res. 148) authorizing the granting of permits to the committee on inaugural ceremonies on the oc-

casion of the inauguration of the President-elect on March 4, 1913, etc.; to the Committee on Public Buildings and Grounds.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. BURTON submitted an amendment proposing to appropriate $640 for the installation of mail chutes in the public building at Cleveland, Ohio, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. WARREN submitted an amendment proposing to appropriate $200,000 to enable the Secretary of Agriculture to cooperate with any State or States which shall have provided by law for the destruction of predatory wild animals and in which national forests are located, etc., intended to be proposed by him to the Agricultural appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

Mr. JONES submitted an amendment proposing to authorize the Secretary of the Interior to make allotments under the general-allotment act of the lands they are now occupying in the county of Pend Oreille, in the State of Washington, to the Kalispel Indians, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

STANDING ROCK INDIAN RESERVATION.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 109) to authorize the sale and disposition of the surplus and unallotted lands in the Standing Rock Indian Reservation, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect, which was to strike out all after the enacting clause and insert:

That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Standing Rock Indian Reservation, in the States of South Dakota and North Dakota, lying and being within the following-described boundaries, to wit: Commencing at a point in the center of the main channel of the Missouri River where the township line between townships 18 and 19 north intersects the same; thence west on said township line to a point where the range line between ranges 22 and 23 east intersects the same; thence north along the said range line to the northwest corner of section 19, in township 21 north, of range 23 east; thence east on the section line north of sections 19, 20, 21, 22, 23, and 24 to a point where the same intersects the range line between ranges 23 and 24 east; thence north along said range line to a point where the same intersects the State line between the States of South Dakota and North Dakota; thence west on said State line to a point where the range line between ranges 84 and 85 west in North Dakota intersects the same; thence north on said range line between ranges 84 and 85 west to a point where it intersects the center of the main channel of the Cannon Ball River; thence in a northeasterly direction down and along the center of the main channel of said Cannon Ball River to a point where it intersects the center of the main channel of the Missouri River; thence in a southerly direction along the center of the main channel of the said Missouri River to the place of beginning, and including also entirely all islands, if any, in said river, except such portions thereof as have been allotted to Indians: *Provided*, That sections 16 and 36 of the lands in each township therein shall not be disposed of, but shall be reserved for the use of the common schools of the States of South Dakota and North Dakota, respectively: *Provided further*, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *Provided, however*, That the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other proper authority of any religious organization, heretofore engaged in mission or school work on said reservation, for such lands thereon (not included in any town site herein provided for) as have been heretofore set apart to such organization for mission or school purposes.

SEC. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in said proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior shall cause allotments to be made to every man, woman, and child belonging to or holding tribal relations in said reservations who have not heretofore received the allotments to which they are entitled under provisions of existing laws: *Provided, however*, That the said Secretary is hereby authorized to designate the superintendent of the Standing Rock Indian School to allot each child born subsequent to the completion of the allotments herein provided for and 60 days prior to the date set by said proclamation for the entry of said surplus lands: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the unsurveyed lands, if any, within said reservation, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal or other valuable minerals the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars or Philippine insurrection, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged.

SEC. 3. That before any of the land is disposed of, as hereinafter provided, and before the States of South Dakota and North Dakota, respectively, shall be permitted to select or locate any lands to which it may be entitled by reason of the loss of sections 16 or 36, or any portions thereof, by reason of allotments thereof to any Indian or Indians, the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause same to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe, and he is hereby authorized to set apart and reserve for school, park, and other public purposes not more than 10 acres in any one town site, and patents shall be issued to the lands so set apart and reserved for school, park, and other public purposes to the municipality legally charged with the care and custody of lands donated for such purposes. The purchase price of all town lots sold in town sites, as hereinafter provided, shall be paid at such time and in such installments as the Secretary of the Interior may direct. He shall cause not more than 20 per cent of the net proceeds arising from such sales to be set apart and expended under his direction in the construction of school-houses and other public buildings, or in improvements within the town sites wherein such lots are located. The net proceeds derived from the sale of such lots and lands within the town sites as aforesaid shall be credited to the Indians as hereinafter provided: *Provided further*, That all children of school age and of Indian parentage shall be admitted at all times to the public schools within said town sites on an equal footing with all other children admitted to the said schools.

SEC. 4. That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all lands entered or filed upon within three months after the same shall be opened for settlement and entry, $6 per acre, and upon all lands entered or filed upon after the expiration of three months and within six months after the same shall have been opened for settlement and entry, $4 per acre; after the expiration of six months, after the same shall have been opened for settlement and entry, the price shall be $2.50 an acre.

SEC. 5. That the price of said lands shall be paid in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal installments, the first within two years and the remainder annually in three, four, five, and six years, respectively, from and after the date of entry. In case any entrymen fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the price fixed herein: *Provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for the payments previously made. In addition to the price to be paid for the land the entryman shall pay the same fees and commissions at the time of commutation of final entry as now provided by law where the price of land is $1.25 per acre; and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence, and shall have made all the required payments aforesaid, he shall be entitled to patent for the lands entered: *Provided further*, That any lands remaining unsold after said lands have been opened to entry for five years may be sold to the highest bidder for cash, without regard to the prescribed price thereof fixed under the provisions of this act, under such rules and regulations as the Secretary of the Interior may prescribe, and patents therefor shall be issued to the purchasers.

SEC. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums of which the said tribe may be entitled, which shall draw interest at 3 per cent per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization: *Provided*, That from any moneys in the Treasury to the credit of the Standing Rock Indians derived from the proceeds arising from the sale and disposition of their portion of the surplus and unallotted lands disposed of under section 6 of the act approved May 29, 1908, the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to distribute and pay to each of the Indians belonging to said tribe and entitled thereto a sum not exceeding $40 per capita.

SEC. 7. That sections 16 and 36 of the land in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at $2.50 per acre, and the same are hereby granted to the States of South Dakota and North Dakota, respectively, for such purpose, and in case any of said sections or parts thereof are lost to either of the said States by reason of allotments thereof to any Indian or Indians or otherwise, the governor of each of said States, respectively, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section 1 of this act, to locate other lands not otherwise appropriated, not exceeding two sections in any one township, which shall be paid for by the United States, as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 8. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State, or otherwise disposed of, shall be subject for a period of 25 years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country.

SEC. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $180,000, or so much thereof as may be necessary, to pay for the lands granted to the States of South Dakota and North Dakota, as provided in section 7 of this act. And there is hereby appropriated the further sum of $10,000, or so much thereof as may be necessary, for the purpose of making the surveys and allotments provided for herein: *Provided*, That the said $10,000, or so much thereof as may be expended for the purpose of carrying out the provisions of this act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribe.

SEC. 10. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said

Indians of the Standing Rock Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

Mr. CLAPP. I move that the Senate disagree to the House amendment and ask for a conference on the disagreeing votes of the two Houses, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to, and the President pro tempore appointed Mr. CLAPP, Mr. MCCUMBER, and Mr. ASHURST conferees on the part of the Senate.

Mr. CRAWFORD. Will the amendment of the House be printed in the RECORD?

The PRESIDENT pro tempore. Necessarily, having been read from the desk.

HOUSE BILL REFERRED.

H. R. 16843. An act to consolidate the veterinary service, United States Army, and to increase its efficiency, was read twice by its title and referred to the Committee on Military Affairs:

OMNIBUS CLAIMS BILL.

The PRESIDENT pro tempore. The morning business is closed.

Mr. CRAWFORD. I move that the Senate resume the consideration of House bill 19115, known as the omnibus claims bill.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 19115) making appropriation for payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly know as the Bowman and the Tucker Acts.

Mr. CRAWFORD. The Senator from Massachusetts [Mr. LODGE], I think, had not concluded his remarks yesterday.

Mr. LODGE. Mr. President, when I stopped yesterday, the hour having arrived for the assembling of the court, I was speaking about the proposition made by the report of the Committee on Claims, which, it seemed to me, would lead to changing the rule adopted by all our commissions, and that to establish any such new rule at the present date by act of Congress, overruling the judicial decisions, would probably have consequences of the most serious character for the United States Government in the future. It would amount to a solemn declaration to the world by the United States Government that if in the future a government shall arbitrarily stop an American vessel and cargo in the pursuit of a lawful voyage, and, after breaking up the voyage, unlawfully appropriate the vessel or cargo to her own use, the obligation of such offending nation would be fully discharged by the allowance of the simple value of the ship and cargo at the time of her departure from the original port, without any addition of premium as additional value added to the cargo by the risks which it incurs or by any addition of freight, which is the amount which the vessel had earned up to the time she was stopped by the unlawful act of the other government. Also, that insurers of a cargo or vessel could not recover the full amount paid by them to the owner of the vessel and by subrogation to his rights for the same, but that the amounts so paid by them must be diminished by the amount of the premium paid.

Is it worth while for the United States Government to scale down awards made to its own citizens and thereby establish for all time a precedent of the utmost inconvenience? Is it not, rather, the highest public policy as well as in accordance with the demands of honesty to satisfy the adjudications of its own courts by the payment of the allowed amounts in full, thus putting ourselves in a strong position should the time ever arise to demand satisfaction from foreign governments for the full amount of damage which they may cause to our own citizens?

Clearly, good faith to our own citizens, as well as the establishment of a proper precedent for future contingencies, demands that the entire amount of damage allowed by the Court of Claims, in accordance with uniform precedents, be appropriated and paid.

I want to discuss very briefly—I have only a very little more to say, Mr. President—some statements made by the committee in the course of its report in regard to certain points of international law.

On page 336, No. 69, schooner *Hiram*, Ebenezer Barker, master, we are told that—

> a doubt naturally arises as to whether or not this vessel, destined for the English settlement at Martinique, which was in rebellion against France, was not smuggling goods into that port or whether the owners of that cargo may not have been Englishmen; or not neutral goods, possibly they may have been contraband.

How an English settlement could have been in rebellion against France is not plain. France and England were at that time in open and bitter warfare. Martinique was actually held by the English and was to all intents and purposes at that date a British possession.

What is meant by "smuggling goods" is not clear. Possibly it means sailing for a blockaded port. If so, the response is clear. At that date, as the Court of Claims has found on elaborate investigation, there was no blockade by the French of any English possession whatever. (See decision of the Court of Claims in the case of the schooner *John*, 22 C. Cls., 408, 440–454.)

England was at that time the undisputed mistress of the seas. A blockade in order to be binding must be effective; that is, maintained by a sufficient force. France had no naval force by which it would have been possible to maintain for a moment a blockade of any British possession. In the absence of such blockade it was perfectly lawful for the ships of the United States, as for all neutrals, to sail to a British port.

The question whether the owners of the cargo were Englishmen is also immaterial. No claim is made on behalf of the cargo. The American vessel had a perfect right to carry a cargo for an Englishman without subjecting the vessel to capture.

The treaty of 1778 between France and the United States in effect adopted the maxim, "free ships, free goods." (Art. 23 of the treaty, Public Treaties of the United States, 1875, p. 210.) True, the capture was shortly after the date of the act of July 7, 1798 (1 Stat. L., 578), which abrogated the treaties between France and the United States. But even without that treaty and by general principles of international law the utmost that a French vessel could do would be to take the enemy's goods off the vessel and release the vessel.

In the case of the brig *William* (23 C. Cls., 201), the court allowed the claim of citizens of the United States for the value of the vessel, although it disallowed the claim for the cargo, which was owned by British citizens. Such is the uniform rule of international law.

This same confusion appears at page 351 of the report, where (under No. 80, schooner *Little Fanny*) it is said:

> This cargo may have belonged to the public enemy of France and to some alien, so far as the record shows. If so, what position would that leave the owner of the vessel in, even though he was an American citizen and his vessel a regular vessel of the United States?

This question is answered by the decision of the Court of Claims in the ship *Joanna* (24 C. Cls., 198, 208) as follows:

> We conclude that at the time the *Joanna* was condemned a court, acting under the law of nations, untrammeled by local ordinances, would have ordered the confiscation of the enemy cargo and would have freed the neutral ship with freight money as remuneration, together with compensation for any extra expense which the master might have incurred and which was directly caused by the seizure.

Again, under the heading of the schooner *Swan*, Samuel Shaw, master, it is stated at page 366 that the vessel was owned by Joseph Prince, an American citizen, and then it is suggested that "the ship may not have been neutral." It is difficult to understand what meaning this statement can have. The ownership of a vessel by a neutral is what makes the ship neutral. The two statements are entirely in conflict.

In St. Clair *v.* United States (154 U. S., 134, 151) the Supreme Court of the United States said, with reference to this question:

> We are of opinion that the court below did not err in holding that the certificate of the vessel's registry and its carrying the American flag was admissible in evidence and that such evidence made, at least, a prima facie case of proper registry under the laws of the United States and of the nationality of the vessel and its owners. "The purpose of a register," this court has said, "is to declare the nationality of a vessel engaged in trade with foreign nations and to enable her to assert that nationality wherever found. (The *Mohawk*, 3 Wall., 566, 571.)

Under the case of the schooner *Sally*, John D. Farley, master, No. 99, page 379, it is stated that the rum of which the cargo consisted was of English manufacture. The cargo was confiscated, but the vessel released. The decision of the court allows freight earnings to the ship, but the committee says at the conclusion:

> This claim does not rest upon a very satisfactory basis.

There could hardly be a clearer claim. Freight earnings, as I have shown, are universally allowed by international courts and commissions where a vessel is carrying a lawful cargo.

See the citation above given from the case of the ship *Joanna* (24 C. Cls., 198, 208), where it is shown that a neutral vessel carrying even a cargo of enemies' goods was entitled under international law as administered at the end of the last century to release with her freight earnings, the enemies' cargo alone being confiscated. A much more liberal rule was at the date of the particular capture in question in force by treaty between France and the United States.

The twenty-third article of the treaty of 1778 between France and the United States was, at the date of this capture, in full

force and effect. This article provided as follows (Public Treaties of the United States, 1875, pp. 209–210):

It shall be lawful for all and singular the subjects of the most Christian King, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the most Christian King or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid to sail with the ships and merchandises aforementioned and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same prince or under several. And it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner that the same liberty be extended to persons who are on board a free ship, with this effect, that, although they be enemies to both or either party, they are not to be taken out of that free ship unless they are soldiers and in actual service of the enemies.

The next article, 24 (p. 210), contains a specific description of the goods which shall be contraband and contains another list of the goods which shall not be deemed contraband. Among such goods which are not to be deemed contraband are "beer, wines, and in general all provisions which serve for the nourishment of mankind and the sustenance of life." According to the twenty-fourth article these goods are not contraband, and according to the twenty-third, the American vessel had a perfect right to carry lawful goods, though belonging to an enemy of France. The goods having been most unlawfully and without the shadow of right taken off the vessel, the owner of the vessel was clearly entitled to recover in this proceeding the freight for the carriage of the goods of which he was deprived by the unlawful act of the French authorities.

From what has been shown in regard to the action of a number of the commissions and courts which have passed upon international claims, it will be evident that all items of allowance made by the Court of Claims rest upon ample precedent. Indeed, it may safely be said that if the court had disallowed any one of them, if it had refused to allow the vessel owner his freight for the voyage, if it had refused to allow the premium of insurance as a part of the value added to the goods by the risks which they were to undergo, or if in allowing the underwriter the amount of his insurance paid, it had reduced the amount of his loss by charging the amount of the premium against him, it would have violated every precedent ever laid down by all the commissions and courts which had previously adjudicated upon these subjects. These commissions, as I showed yesterday, were United States commissions, mostly domestic, but some mixed commissions.

Moreover, a reference to the action of these tribunals, as we have referred to them, shows that in several important particulars the Court of Claims has been much less liberal than previous tribunals, in that it has refused to allow such items as the following, which have been allowed by most, if not all, previous tribunals passing upon international claims:

1. Expenses attending the lading of the cargo on board the vessel at the port of departure. None of these expenses of lading have in any case been allowed, while in a number the court has refused to allow them when asked for by the claimants.

2. Premium of insurance "to cover"—that is, the allowance of a fair and usual premium of insurance where the owner did not actually pay such premium to another, but took the whole risk of the voyage on himself.

3. Profits expected to accrue from the voyage.

These have been uniformly disallowed by the Court of Claims. The court has confined its allowances to giving two-thirds of the freight for the actual voyage on which the vessel was engaged when captured.

4. Interest: This is always allowed in international claims as between nation and nation and as much as it is in a domestic admiralty court between party and party.

Of course, no one supposes that a restoration of the principal sum allowed by the Court of Claims in any of these cases after the lapse of 100 years to the next of kin of the original sufferers comes anywhere near being a compensation for the loss. Interest would have to be added to make it approximately just compensation. Interest not being allowed, why should the failure to do full justice be aggravated by cutting out the items which the Court of Claims has allowed?

It is submitted that instead of seeking for a mode of cutting down these claims to the smallest possible amount, the principle ought to be maintained which is thus quoted from a high authority in Ralston, International Arbitral Law and Procedure, section 353, page 172:

In the Orr and Laubenheimer case (Foreign Relations of 1900, 826) the arbitrator between the United States and Nicaragua said that where property had been taken for the public welfare "it seems to me right that the benefit of doubt should be thrown in favor of the individual, and that his damages should be liberally estimated lest by any error he should be oppressed."

The very impossibility that both Houses of Congress should examine all the details of these claims and the internal evidence afforded by the report of the Committee on Claims that they have not been looked into, shows the wisdom of the original provision of law referring these claims to the Court of Claims for conclusions of both fact and law. It is essential to the orderly administration of justice that the findings of the court should be accepted by Congress as a basis for its action as regards the amounts to be allowed. They certainly have been accepted as a basis for disallowing all those claims which the Court of Claims has thrown out.

I shall ask leave to have printed a list of payments already made and of precedents in Congress for action on these claims.

The PRESIDING OFFICER (Mr. LA FOLLETTE in the chair). Without objection it will be so ordered.

The matter referred to is as follows:

PRECEDENTS IN CONGRESS.

Congress has heretofore by appropriations allowed the following amounts:

Mar. 3, 1891, 26 Stat. L., 897 (51st Cong.)	$1,304,095.37
Mar. 3, 1899, 30 Stat. L., 1161 (56th Cong.)	1,055,473.04
May 27, 1902, 32 Stat. L., 207 (57th Cong)	798,631.27
Feb. 24, 1905, 33 Stat. L., 743 (58th Cong.)	752,660.93
Total	3,910,860.61

All of these allowances include items of the same character as those which it would appear that the committee contemplates striking out. After the vast majority of these claims are now paid, the ground ought not to be shifted and a question for the first time raised as to the character of the items.

The recommendation made by the President in his message of December 21, 1911 (H. Doc. No. 343, 62d Cong., 2d sess., pp. 15, 16), is fully justified and should be followed:

FRENCH SPOLIATION AWARDS.

"In my last message I recommended to Congress that it authorize the payment of the findings or judgments of the Court of Claims in the matter of the French spoliation cases. There has been no appropriation to pay these judgments since 1905. The findings and awards were obtained after a very bitter fight, the Government succeeding in about 75 per cent of the cases. The amount of the awards ought, as a matter of good faith on the part of the Government, to be paid."

Mr. CRAWFORD. I ask for a vote on the pending amendment to the amendment of the Senator from Massachusetts [Mr. LODGE].

Mr. LODGE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Gallinger	Newlands	Smith, Ariz.
Bankhead	Gronna	O'Gorman	Smith, Md.
Borah	Hitchcock	Oliver	Smoot
Bradley	Jones	Page	Stephenson
Brandegee	Kenyon	Penrose	Swanson
Bristow	Kern	Perkins	Thornton
Bryan	La Follette	Perky	Townsend
Catron	Lippitt	Richardson	Warren
Chamberlain	Lodge	Root	Wetmore
Clark, Wyo.	Martin, Va.	Sanders	
Crawford	Martine, N. J.	Shively	
Fletcher	Myers	Simmons	

Mr. SIMMONS. I desire to announce that my colleague [Mr. OVERMAN] is absent on account of sickness.

Mr. TOWNSEND. The senior Senator from Michigan [Mr. SMITH] is absent on business of the Senate. I should like to have this announcement stand for the day.

Mr. KERN. I again announce that the junior Senator from South Carolina [Mr. SMITH] is detained from the Senate on account of the death of his son.

Mr. JONES. I desire to announce that my colleague [Mr. POINDEXTER] is absent from the city on important business.

Mr. BANKHEAD. I desire to announce that my colleague [Mr. JOHNSTON of Alabama] is absent on account of illness.

The PRESIDING OFFICER. Forty-five Senators have answered to their names, not a quorum. The Secretary will call the names of absent Senators.

The Secretary called the list of absentees, and Mr. FOSTER, Mr. JOHNSON of Maine, Mr. MCCUMBER, Mr. PAYNTER, Mr. WILLIAMS, Mr. MCLEAN, Mr. CLAPP, Mr. CUMMINS, Mr. BROWN, and Mr. WORKS responded to their names.

Mr. PAYNTER. I should like to announce that the Senator from Alabama [Mr. JOHNSTON] is ill and is absent on that account.

The PRESIDING OFFICER. Fifty-five Senators have answered to their names. A quorum of the Senate is present.

The question is on agreeing to the amendment offered by the Senator from South Dakota [Mr. CRAWFORD] to the amendment offered by the Senator from Massachusetts [Mr. LODGE]. Is the Senate ready for the question?

Mr. LODGE. Mr. President, as very few Senators have heard the debate, I merely wish to say that the amendment offered by the Senator from South Dakota to my amendment cuts down the allowances of the Court of Claims as provided for in my amendment. My amendment simply provides for the payment of the allowances made by the Court of Claims in each case. For various reasons in various cases the Senator from South Dakota proposes to reduce these allowances. I do not think they ought to be reduced, and I have on that account opposed the amendment to the amendment.

Mr. BRISTOW. As I understand, the amendment upon which we are now to vote reduces the amount of the French spoliation claims which the amendment of the Senator from Massachusetts carries. I do not believe any of these claims ought to be paid, and I intend to vote against the amendment of the Senator from Massachusetts; but since the amendment offered by the Senator from South Dakota reduces the amount, I shall vote for it, because it cuts out what I do not think ought to be allowed.

Mr. BORAH. How much is the reduction in the claims?

Mr. CRAWFORD. About $270,000.

Mr. BORAH. How much does it leave?

Mr. CRAWFORD. About six hundred-odd thousand dollars. It simply cuts out of the amendment the premiums on the insurance and also the freight charges. It allows the actual property loss.

Mr. NEWLANDS. I would like to ask the Senator from South Dakota whether the parts of these claims which he proposes to strike out were not allowed by the Court of Claims?

Mr. CRAWFORD. They were allowed as other items were allowed; that is, they found that the freight earnings in such a case, for instance in the case of the ship *Liberty*, were so much and the amount paid for premiums were so much; they found as a conclusion of law a liability on the part of the French Government for those premiums and freight earnings.

Mr. NEWLANDS. I wish to ask the Senator, further, as to what amount of claims in total has been paid by the National Government?

Mr. CRAWFORD. I would only be able to say offhand, because they have run through several appropriation bills, but I would say $2,000,000 or $3,000,000.

Mr. LODGE. I this morning gave the exact figures to the reporter, although I did not read them. About $4,000,000 has already been paid on these claims.

Mr. NEWLANDS. May I ask what amount remains unpaid?

Mr. CRAWFORD. So far as concern the findings in this bill, they amount to $942,000. Back of that are some incorporated insurance companies claims.

Mr. NEWLANDS. I will ask further, whether the Court of Claims has not very nearly reached a finality in the liability of the National Government under the French spoliation arrangement.

Mr. CRAWFORD. I can only say that occasionally a straggling case comes from that court, but apparently the list is about run out.

Mr. NEWLANDS. About run out?

Mr. CRAWFORD. Yes.

Mr. NEWLANDS. I will ask the Senator, further, whether he does not think the National Government is getting off very cheaply under this obligation to France to pay her obligations regarding these American claims?

Mr. CRAWFORD. Mr. President, I do not care to detain the Senate with an expression of opinion about that—as to the merits of these claims. I have a very positive opinion that there is merit in them. I at one time expressed that opinion with a good deal of emphasis. I have not changed my mind about it. But, as I said the other day, the Committee on Claims, of which I am a member, considered that it was not wise to place the French spoliation claims upon this bill as an amendment, because the very sharp and positive differences of views in regard to those claims, not only in this body but in the other branch of Congress, would mean the absolute defeat of this bill.

I joined with my associates, after the majority so decided, in a report that left out the French spoliation claims, and on that account I propose to stand with that committee. But I ask that the matter be disposed of one way or the other. We can not keep the omnibus claims bill here in the position of obstructing other business and monopolizing the attention of the Senate. I think we already have given a good deal of attention to it and I ask that it be disposed of one way or the other.

Mr. NEWLANDS. Mr. President, I join with the Senator from South Dakota in a desire for a speedy determination of this matter, and it is not my intention to extend my remarks upon this bill at any length.

I simply wish to say that those who have inquired into the operations of the Court of Claims must realize how small a portion of the claims that are made against the United States Government pass that body and how thorough is the sifting process of that tribunal.

I wish also to say that it is utterly impossible for the Senate of the United States and the House of Representatives to sit as a reviewing court upon all these claims that pass the Court of Claims. Time itself would not permit such a thorough inquiry into the facts and circumstances relating to these claims and the judgments rendered upon them as to permit the Congress of the United States, without a sacrifice of its duty in other directions, to inquire into all the niceties of these questions.

We know as a matter of fact that the shipping of the United States was the victim of serious ravages by France. We all know as a matter of history that the losses inflicted upon American shipping were very large. We all know that the United States Government by solemn treaty assumed the obligation that France had to respond to the United States in damages. And we know that if the United States Government were to-day pressing the claims of its citizens against the French Government for the recovery of these amounts, the United States Government would be pressing for the very sums which are now under question here, and pressing them with all the power of the Government behind them, as a matter of justice and of right to American citizens.

Now, then, we all know as a matter of history that the damage inflicted upon American shipping far exceeded $5,000,000. We know that already only four millions have been paid; that this bill provides for only $800,000 or $900,000 more; that we have very nearly reached the limit of these claims. Why should we halt now?

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nevada yield?

Mr. NEWLANDS. I wish to speak for only a few moments, but I yield to the Senator.

Mr. BRISTOW. If the Senator will permit me, I simply wish to express the hope that we may reach a vote before 1 o'clock. I do not think a roll call will be demanded on the amendment to the amendment, and I only hope we may have an opportunity to vote on that.

Mr. NEWLANDS. I will yield the floor to the Senator in one moment.

We have organized a court for the purpose of inquiring into and ascertaining the facts, and there is no reason to suspect either the integrity or the efficiency of that court. These inquiries involve matters concerning which it is utterly impossible for the Congress of the United States, as a reviewing court, to give the consideration which they deserve, and as a matter of history we know that these claims must have amounted to more than $5,000,000, and there is no present possibility of their much exceeding that amount. It seems to me that as a matter of justice and right we ought to validate by an appropriation the judgment of the courts which the Government itself has appointed for the purpose of determining the validity of claims against it.

Mr. ROOT. Mr. President, I am sorry to disappoint the chairman of the committee, but I am somewhat interested in these claims, and I should like to have them paid. I am afraid that the desire of the chairman to get to a vote before 1 o'clock is accompanied by a lack of desire to have the amendment of the Senator from Massachusetts adopted.

I have not studied the subject as I probably ought to have studied it, Mr. President, but for a great many years I have had a strong impression derived from many sources that it was quite discreditable to the Government of the United States that these claims were not paid. It has seemed to me that they were illustrations of a general rule that the worse a claim was the less substance there was in it, and the more the claimant could afford to pay out of it to have it pushed the better was its chance. I have known good people, poor people, earning their daily bread by their daily work, living through their lives with the faint hope before them of the payment of one of these French spoliation claims.

I should like now to ask the chairman of the committee whether the fact that so large a part of these claims has already

been paid does not create a situation in which we should regard the principle as settled. Now, is that not sound?

Mr. CRAWFORD. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from South Dakota?

Mr. ROOT. Certainly.

Mr. CRAWFORD. I will simply say to the Senator from New York that we face a situation and conditions here where it is a question of advisability as to whether or not the claims bill which passed the House shall include the French spoliation claims.

The PRESIDING OFFICER. The hour of 1 o'clock having arrived, under the order previously adopted the Senate will resume its session as a court.

Mr. CLAPP. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cullom	Lodge	Sanders
Bacon	Cummins	McLean	Shively
Bankhead	Dillingham	Martin, Va.	Smith, Ariz.
Borah	du Pont	Martine, N. J.	Smoot
Bradley	Fletcher	Myers	Stephenson
Brandegee	Foster	Nelson	Sutherland
Bristow	Gallinger	O'Gorman	Swanson
Brown	Gronna	Oliver	Thornton
Bryan	Hitchcock	Page	Tillman
Burnham	Johnson, Me.	Paynter	Townsend
Burton	Johnston, Tex.	Penrose	Warren
Catron	Jones	Perkins	Wetmore
Chamberlain	Kenyon	Perky	Works
Clapp	Kern	Pomerene	
Crawford	La Follette	Richardson	
Culberson	Lippitt	Root	

The PRESIDENT pro tempore. On the call of the roll of the Senate 61 Senators have responded to their names, and a quorum of the Senate is present.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDENT pro tempore (Mr. BACON) having announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald, the respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, Mr. Robert W. Archbald, jr., and Mr. Martin.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The Sergeant at Arms made the usual proclamation.

Mr. SMOOT. I offer the following order.

The PRESIDENT pro tempore. The order will be read.

The order was read, as follows:

Ordered, That the time for final arguments in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall be limited to three days from and including January 8, 1913, and shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, the time thus assigned to each side to be divided as each side may for itself determine.

Mr. Manager CLAYTON. Mr. President, I would ask the consent of the Senate, before the further consideration of that order, to make a correctoon in the RECORD of yesterday.

The PRESIDENT pro tempore. That will be reached in its order, the Chair takes the liberty to suggest to the manager.

Mr. Manager CLAYTON. The manager cheerfully accepts the suggestion of the Chair.

The PRESIDENT pro tempore. The Journal has not yet been read. The question is on the adoption of the order presented by the Senator from Utah.

Mr. CULBERSON. I should like to inquire if that is agreeable to counsel on both sides.

Mr. WORTHINGTON. Mr. President, I may say it is entirely agreeable to counsel for the respondent. We have had some conference with the managers about it, and we understand that all the managers who are to speak except the one who is to make the closing argument will speak before we begin.

Mr. Manager CLAYTON. The respondent's counsel may not give himself any uneasiness on that score, Mr. President, for I have repeatedly told him in private conversation, and I think I have repeated it on the floor of the Senate, that I thought it was fair and right that the managers should have only one speech in conclusion. So the suggestion of the respondent's counsel seems to me to be inappropriable on this occasion.

Now, Mr. President, if I understood the reading of that order, it set three days. That was not our understanding of the order yesterday. Perhaps it can be or is susceptible, and will be so construed, as to harmonize with our understanding of that order.

The managers acted upon the belief in their conference this morning that the Senate was to meet at the hour of 1 o'clock each day and was to hold a session daily for three days until the hour of 6 on each day, making 15 hours of time for the arguments of this case, one-half of which should be controlled by the managers and one-half of which should be controlled by the respondent's counsel.

The PRESIDENT pro tempore. The manager will permit the Chair to state that the order fixing the hours from 1 to 6 has been previously adopted by the Senate.

Mr. Manager CLAYTON. It was not made specifically a part of the order of 15 hours.

The PRESIDENT pro tempore. It was so done this morning, by order of the Senate.

Mr. Manager CLAYTON. The manager was not present when that action of the Senate was had, therefore, Mr. President, the manager thought it was incumbent upon him to have a perfect understanding of this matter before any discussion should arise in regard to the adoption of this order or before the order itself should be adopted, if it be adopted without discussion.

Now, Mr. President, in view of the statement the Chair has made, and which coincides with the understanding the managers had of the action of the Senate on yesterday when it went into private session to consider this matter, I am authorized by my associates to say that the order of the Senate having been agreed upon in the session I have referred to, and having met the views which are authorized by the sound discretion of the Senate, meets with no objection on the part of the managers, and they cheerfully acquiesce in that order and hope the Senate will adopt it.

The PRESIDENT pro tempore. The question is on the adoption of the order submitted by the Senator from Utah [Mr. SMOOT]. As many as favor it will say "aye." [Putting the question.] The ayes have it, and the order is adopted. The Secretary will read the Journal of the last session of the Senate sitting as a court.

The Secretary read the Journal of the proceedings of the Senate sitting as a court of Tuesday, January 7, 1913.

Mr. LODGE. Mr. President, I called attention to a slight error in the RECORD this morning, which, I suppose, will be sufficient for the correction of the Journal.

The PRESIDENT pro tempore. Are there any inaccuracies in the Journal? If not, it will stand approved. The manager will now present the matter of correction to which he referred.

Mr. Manager CLAYTON. Mr. President, on page 1333 of the testimony printed in the pamphlet form, about the middle of the page, the witness, Mr. C. G. Boland, was under examination, and in response to a question he said:

I did. And he then dictated to a stenographer, I think, that statement, which he believed was sufficient to satisfy Mr. Watson that he would be paid $5,000 in the event of his disposing of the property. I presented it to Mr. Watson, and he declined it.

Mr. Boland, as all the managers remember, and as the witness himself tells us this morning, said:

I presented it to Mr. Watson, and he accepted it.

Mr. WORTHINGTON. We agree to that.

Mr. Manager CLAYTON. We wish that the word "declined" be stricken out and the word "accepted" be substituted.

And, Mr. President, may I say that I think the reports made in this case by the stenographers of the Senate have been unusually accurate.

The PRESIDENT pro tempore. The correction will be made as suggested by the manager.

Mr. CLARK of Wyoming. Mr. President, following the precedent established in the last impeachment trial, I offer the following order.

The PRESIDENT pro tempore. The order will be read.

The Secretary read as follows:

Ordered, That any of the managers or counsel for the respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the reporter or any portion thereof, which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read, and the same shall be incorporated by the reporter as a part of the argument delivered; and any manager or counsel who does not address the court may file and have printed as a part of the proceedings an argument before the close of the discussion.

Mr. CULBERSON. I should like to ask the Senator from Wyoming if it is not contrary to the established rule of the Senate to have matter printed that has not been delivered before the body.

Mr. CLARK of Wyoming. I said, in offering the order, that it was according to the precedent in impeachment cases. It is contrary to the ordinary rule of the Senate, but it is a proceeding which has been followed in impeachment trials in order to save the time of the Senate and preserve the record.

Mr. CULBERSON. I do not approve of that policy, Mr. President, but I will not object under the circumstances.

The PRESIDENT pro tempore. The question is on the adoption of the order just presented by the Senator from Wyoming. As many as favor it will say "aye," opposed "no." [Putting the question.] The ayes have it, and the order is adopted by the Senate. The managers will proceed, if they are ready to present their case.

Mr. Manager CLAYTON. Mr. President, as I understand it, 15 hours were accorded to this discussion. It is now, I believe, 16 minutes after the hour of 1 o'clock. I think it is important to make that statement. Mr. Manager STERLING will make the opening argument on behalf of the managers of the House of Representatives

ARGUMENT OF MR. STERLING, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager STERLING. Mr. President, the managers on the part of the House approach the argument in this case with much confidence. They believe that the record which has been made proves the charges set forth in the articles of impeachment, and that those charges constitute impeachable offenses. I think it is plain, from the statement made by counsel for respondent in the beginning of this trial and from the brief which was filed and printed some days ago, that they rely for acquittal on the single proposition that these offenses do not constitute impeachable offenses for the reason that, as they claim, they do not constitute indictable offenses.

In their brief counsel for the respondent lay down, as the first proposition, that no offense is impeachable unless it is indictable; and, as a second proposition, and the only other proposition that they submit, is that if the offense in order to be impeachable need not be indictable it must at least be of a criminal nature.

As to the first proposition, the contention of counsel for the respondent is not sustained either by the language of the Constitution, by the decisions of the Senate in former impeachment cases, by the decisions of other tribunals in this country which have tried impeachment cases, or by the decisions of the English Parliament; nor is that contention sustained, so far as I have been able to read the authorities and the law writers on constitutional law, by a single American writer. The language of the Constitution, so far as it relates to the trial of this case, is this:

> The Senate shall have the sole power to try all impeachments.
> * * * * * * *
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.
> * * * * * * *
> * * * All civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.
> * * * * * * *
> The judges, * * * shall hold their offices during good behavior.

I have stated all the language of the Constitution with which the Senate has to deal in determining the case now before it. I ask the Senate to consider that nowhere in that language is there any limitation as to the nature or extent of the crimes, misdemeanors, and misbehaviors in office. The Constitution does not undertake to define those terms with reference to the jurisdiction of the Senate in removing public officers for the violation of those provisions of that instrument, nor does it limit the time as to the commission of these offenses. It does not provide that the offenses shall be committed during the service from which it is sought to remove him, nor does it limit Congress as to when it may proceed to impeach and try an offending servant. Under the plain language of the Constitution the House of Representatives has the power to impeach and the Senate has the power to try and convict for offenses of the character described in the Constitution, let them have been committed at any time during the term of office from which the respondent is sought to be removed, during his service in some other office, or during some other term, or for offenses committed before he became an officer of the United States and while he was a private citizen.

If the Constitution puts no limitation on the House of Representatives or the Senate as to what constitutes these crimes, misdemeanors, and misbehaviors, where shall we go to find the limitations? There is no law, statutory nor common law, which puts limitations on or makes definitions for the crimes, misdemeanors, and misbehaviors which subject to impeachment and conviction.

It will not be maintained either by the managers or by the counsel for the respondent that precedents bind, and yet we may well consider them because they are so uniform on the question as to what constitutes impeachable offenses. The decisions of the Senate of the United States, of the various State tribunals which have jurisdiction over impeachment cases, and of the Parliament of England all agree that an offense, in order to be impeachable, need not be indictable either at common law or under any statute.

I shall not weary the Senate with reading the history of impeachment cases, but I do desire to read briefly from some of the law writers of this country, giving their conclusions as to what constitute impeachable offenses after they had reviewed and considered cases that have been tried in the Senate and in other forums where impeachment cases have been tried.

I read first from Tucker on the Constitution. On page 416 I find this:

> (c) High crimes and misdemeanors. What is the meaning of these terms? Much controversy has arisen out of this question. Do these words refer only to offenses for which the party may be indicted under the authority of the United States? Do they mean offenses by the common law? Do they include offenses against the laws of the States, or do they mean offenses for which there is no indictment in the ordinary courts of justice? Or do they include malsdministration, unconstitutional action of an officer willful or mistaken, or illegal action willful or mistaken.

And then, under the subject of "bribery," the author says this:

> (e) So in respect to bribery. Bribery corrupts public duty. The difference between treason and bribery is that the first is a crime defined by the Constitution, as to which Congress has no power except to declare its punishment. Bribery is not a constitutional crime, and was not made a crime against the United States by statute until April, 1790. These two cases, therefore, show that the words "high crimes and misdemeanors" can not be confined to crimes created and defined by a statute of the United States; for if Congress had ever failed to have fixed a punishment for the constitutional crime of treason, or had failed to pass an act in reference to the crime of bribery, as it did fail for more than a year after the Constitution went into operation, it would result that no officer would be impeachable for either crime, because Congress had failed to pass the needful statutes defining crime in the case of bribery, and prescribing the punishment in the case of treason as well as bribery. It can hardly be supposed that the Constitution intended to make impeachment for these two flagrant crimes depend upon the action of Congress. The conclusion from this would seem to be inevitable that treason and bribery, and other high crimes and misdemeanors, in respect to which Congress had failed to legislate, would still be within the jurisdiction of the process of impeachment.

I read now from the brief filed by Mr. Manager CLAYTON, in which he quotes from Watson on the Constitution:

> A civil officer may so behave in public as to bring disgrace upon himself and shame upon his country, and he may continue to do this until his name would become a national stench, and yet he would not be subject to indictment by any law of the United States, but he certainly could be impeached. What will those who advocate the doctrine that impeachment will not lie except for an offense punishable by statute do with the constitutional provision relative to judges which says, "Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior"? This means that as long as they behave themselves their tenure of office is fixed, and they can not be disturbed. But suppose they cease to behave themselves? When the Constitution says, "A judge shall hold his office during good behavior," it means that he shall not hold it when it ceases to be good. Suppose he should refuse to sit upon the bench and discharge the duties which the Constitution and the law enjoin upon him, or should become a notoriously corrupt character, and live a notoriously corrupt and debauched life? He could not be indicted for such conduct, and he could not be removed except by impeachment. Would it be claimed that impeachment would not be the proper remedy in such a case?

I now read what Cooley—who, I think, is recognized as one of the greatest constitutional law writers of America—says briefly on this subject. I read from his Principles of Constitutional Law, page 178:

> The offenses for which the President or any other officer may be impeached are any such as in the opinion of the House are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England, where the like proceeding obtains, the offenses have often been political, and in some cases for gross betrayal of public interests punishment has very justly been inflicted on cabinet officers. It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty, which are dangerous and criminal because of the immense interests involved, and the greatness of the trust which has not been kept. Such cases must be left to be dealt with on their own facts, and judged according to their apparent deserts.

Mr. President, the following is from volume 15 of the American and English Encyclopedia of Law, paragraph 2, page 1066:

> The Constitution of the United States provides that the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very eminent authority, but the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate. In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute and in several cases they were such as constituted neither a statutory nor a common-law crime. The impeachability of

the offenses charged in the articles was in most of the cases not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense; but after exhaustive argument on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes, that the phrase "high crimes and misdemeanors" is to be taken not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruption, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it.

Mr. President, at the suggestion of Manager Clayton, I will read from the brief which he filed and in which he quotes from Bouvier's Law Dictionary:

"The offenses for which a guilty officer may be impeached are treason, bribery, and other high crimes and misdemeanors. (Art. II, sec. 4.) The Constitution defines the crime of treason. (Art. III, sec. 3.) Recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by 'other high crimes and misdemeanors,' resort, it is presumed, must be had to parliamentary practice and the common law in order to ascertain what they are. (Story, Const., par. 795.) It is said that impeachment may be brought to bear on any offense against the Constitution or the laws which is deserving of punishment in this manner or is of such a character as to render the officer unfit to hold his office. It is primarily directed against official misconduct, and is not restricted to political crimes alone. The decision rests really with the Senate. (Black, Const. L., 121.)"

And so, Mr. President, I say, that outside of the language of the Constitution, which I quoted, there is no law which binds the Senate in this case to-day except that law which is prescribed by their own conscience, and on that, and on that alone, must depend the result of this trial. Each Senator must fix his own standard; and the result of this trial depends upon whether or not these offenses we have charged against Judge Archbald come within the law laid down by the conscience of each Senator for himself.

I shall leave the further discussion of any legal propositions involved in the case to my associate managers, some of whom I know are much better prepared than I to discuss them, and I invite the attention of the Senators to facts which we believe we have proven in this case, and which, as I said at the beginning, we feel, confidently, constitute crimes for which Judge Archbald should be removed from office under the law as it is laid down in the Constitution and under the law which the Senate will lay down for themselves.

The first offense charged in the articles of impeachment is that Judge Archbald used his official power and influence to prevail on the Erie Railroad Co. and its officials to sell to him and to one E. J. Williams the Katydid culm dump. Briefly, the history of the facts in that case are these:

E. J. Williams went to Judge Archbald in March, 1911, and told him of the Katydid culm dump, and said to him that an option could be had on the interest owned by Robertson & Law, who had worked the Katydid colliery, and that he thought that if an option could be had from the Hillside Coal & Iron Co., which was a subsidiary corporation to the Erie Railroad Co., that the Katydid might be sold at a profit. There is not any question, either in the testimony offered by the managers or by the respondent, or in the testimony of the respondent himself, that Mr. Williams and Judge Archbald were each to share equally in whatever profits came from the transaction.

Now, what did Judge Archbald do? He first wrote a letter to Capt. May, the superintendent of the Hillside Coal & Iron Co. He says that Williams's first request to him was for a letter of introduction. But he did not get a letter of introduction. Several conversations were had in subsequent days, before the 31st day of March, in which it finally developed that Judge Archbald gave a letter to Mr. Williams to take to Mr. May, in which he simply asked Mr. May if the Katydid culm dump was for sale; and if so, to fix a price. It was during those two days that Mr. Williams and Judge Archbald agreed to share these profits. The evidence of Judge Archbald himself is very plain that he declined to give Williams the letter of introduction until Williams had reached the point where he was willing to divide the profits with Judge Archbald in the Katydid culm dump in order to secure the judge's influence, and when in the conversations they had come to that understanding, Judge Archbald wrote this letter, the first step in his effort to influence the railroad company to sell them this dump.

Williams did not succeed. He returned to Judge Archbald and said to him that Capt. May would not talk to him about it; that he was cross and did not seem to want to talk to him about it. And then some time in June Judge Archbald said to Williams, "I will go and see Brownell." Mr. Brownell lived in New York and was vice president of the Erie Railroad Co. Judge Archbald said, "I will go and see Brownell," and he said to Williams, "I have some cases here on my desk now for the Erie Railroad Co"; and Williams said that he (Judge Archbald) said, "I might be able to hurt them for refusing so little a thing as that."

There is some truth, I know, in the testimony of Williams regarding that incident, because Williams said that when he referred to the cases against the Erie Railroad Co. that were on his desk at that time Judge Archbald spoke of one of them as the Lighterage case. It is true that Williams here on the witness stand undertook to say that he saw the word "lighterage" on the back of the briefs. That was not true, because we brought here before the Senate every brief and every printed document in these cases, and the word "lighterage" does not appear anywhere on the back of any of the briefs. And mark, the word "lighterage" appears just in one instance, and that is in the court calendar that was printed for the October term, which had not come to Judge Archbald's desk at that time.

How is it possible for this man Williams to have known anything about the Lighterage cases? He knew nothing about lighterage, and it must have come from Judge Archbald; and when Judge Archbald was asked how it was possible for Williams to have known anything about the Lighterage cases except through him he undertook to say that he might guess that it came from William P. Boland. All the evidence that there is in this case on that point is to the effect that Williams himself told William P. Boland about the Lighterage case instead of Boland telling him about the case. And I believe absolutely, just as Williams stated here, that Judge Archbald did refer to the records of these cases on his desk and say, "Here I have some cases against the Erie Railroad Co. for consideration now," and made some explanation of what is known as the Lighterage case. He did go to New York. On the 4th day of August he went into the office of Mr. Brownell, the vice president and general counsel of the Erie Railroad Co., and, as he undertakes to say, he said to Mr. Brownell, as his reason for coming there, that he wanted to inquire about the title to the Katydid culm dump.

But Mr. Brownell knew nothing about the title to the Katydid culm dump and he referred the matter to Mr. Richardson, who was the legal representative neither of the Hillside Coal & Iron Co. nor of the Erie Railroad Co. He went to New York, and his own detailing of the conversation that occurred with Brownell and Richardson is to the effect that he went there for the purpose of influencing those railroad officials to direct or command Capt. May, of the Hillside Coal & Iron Co., to sell him the Katydid culm dump. Let us see how he succeeded.

But suppose he had not succeeded. Would that be an excuse for the offense charged in this count? Suppose he had sought to impress upon them that here was a judge of the Commerce Court seeking to buy the property of the railroad company and he had failed in his attempt to influence them. Judge Archbald has already committed this offense. So far as he is concerned, he has sought to use his influence as a judge to impel this railroad company to part with its property. But he did succeed. Mark, that Mr. Richardson said that he would take the matter up with Capt. May and that he would hear from them later. On the 25th day of August Capt. May was in New York, and Mr. Richardson gave him direction to sell this property to Judge Archbald and Mr. Williams. He returned to Scranton on the 26th day of August, and on the 29th, meeting Judge Archbald on the street, said to him, "You tell Mr. Williams to come and I will give him an option on the Katydid." In the meantime, from the hour that Judge Archbald says he was in New York to see Mr. Brownell about the state of the title to the Katydid culm dump, nothing had been done by May, nothing had been done by Richardson, Brownell, or Archbald to change the state of that title, nothing had been done to correct or improve the title; but on the 29th day of August, 1911, they make this option to Mr. Williams and Judge Archbald.

It is very evident from the course of counsel for the respondent in this case that they will argue to the Senate that we have not proven any intent on the part of Judge Archbald to corruptly influence the railroad company to sell him the Katydid culm dump. Every lawyer within the sound of my voice recognizes that it is not possible for the prosecution in any case to prove by direct testimony the intent of the accused.

The law everywhere provides that the intent must be inferred from the acts and the conduct of the accused, and the law will imply and presume that he intended the reasonable and natural

consequences of his own act. And what are the reasonable and natural consequences of the act of Judge Archbald with reference to his relations to the railroad company and the Hillside Coal & Iron Co. in this transaction? Does it not naturally follow that a judge of the Commerce Court, which has jurisdiction over interstate railroads, going to these railroad companies and demanding of them a favor, is more likely to get it than a private citizen who appeals to them for similar favors? It is the natural result of his act that they should accede to his request rather than to that of a man who did not hold a position on the Commerce Court.

But let me say now—and the same thing applies to other charges in this impeachment—that the Erie Railroad Co., the Delaware, Lackawanna & Western Railroad Co., and the Lehigh Valley Railroad Co. had litigation then pending in the Commerce Court and that Judge Archbald at the time of the Katydid transaction had these cases on his desk for consideration.

Oh, counsel may argue that it was only an inference that Judge Archbald sought to use this power to influence the Erie Railroad Co., and that there is no evidence in this case that the mere fact that he was a judge of the Commerce Court did persuade them to part with their property. We know from the testimony of both May and Richardson that it was against the policy of the Erie Railroad to sell its coal properties of any kind. But they did sell in this instance, and they sold it after Judge Archbald had gone to see the high officials of the company and importuned them to let them have it.

But suppose he did not intend that his official position should affect their conduct. Let us imagine, if it is possible to do so, that Judge Archbald was so innocent and so guileless that it never occurred to him that his official position might have some effect on these litigants in his court. The effect of these transactions is just the same, and if a judge so conducts himself or commits acts, even without intent to do wrong, and thereby shakes the public confidence in the judiciary of the country and brings his high office into disrepute, he ought to be impeached and removed from office.

The evil of all these cases does not consist merely in Judge Archbald making a profit by the use of his official power. That is not the great evil which comes to the people of the country by reason of his conduct. The greatest evil from conduct such as his lies in the fact that it disturbs the public mind and shakes the faith of the people in American institutions; and when the faith of the people in American institutions is shaken it is impossble for them to endure.

Counsel for respondent has offered in this case much evidence as to the value of the Katydid culm dump. Page after page is devoted to that end, and their excuse for doing so is because we called Mr. Rittenhouse, who had made a survey of the dump and had estimated its value and given it to the Department of Justice during the preliminary investigation of this case. We never offered the report of Mr. Rittenhouse because we felt that the question of value was material to the issue in this first count, nor is it material now as to whether the Katydid culm dump was worth more or less than what Williams and Archbald agreed to pay for it, the sum of $8,000. It was worth much more. The testimony of Rittenhouse, who investigated it for the Department of Justice; the testimony of the engineer, Saum, who investigated and tested it for the Du Pont Powder Co., and the report of Mr. Merriam, the engineer for the Hilside Coal & Iron Co., who before his death had investigated it, all found that there were from 50,000 to 55,000 tons of coal in the Katydid culm dump.

But, as I said, that is not material to the issue. The question is, What was the frame of mind on that question which Judge Archbald entertained when he was seeking to buy it? What did he think it was worth? If he believed that he could influence the railroad company to sell to him for $8,000 and, after buying it for that price, that he could sell it for a profit, that is the question in the case, and that is the motive that prompted him to use his power as a judge to get this property.

Judge Archbald was right about it. He knew—or, at least, relying on Williams he knew—that he was getting it at a bargain, because within 60 days they had sold it for $20,000, a profit of $12,000, which was to be divided equally between Williams and Archbald. Williams did not put in a dollar. He did not have any money to put in it. Archbald did not put in a dollar. The capital that those two men employed to get that property was this: Williams's experience as a coal-dump finder; he found the dump; and Judge Archbald offset that capital of Mr. Williams with his influence with the railroad company. Williams's experience and Archbald's influence—there was the partnership, and with that as their capital they started into the coal business on equal terms and equal footing and agreed to divide the profits equally.

When counsel for respondent, Mr. Worthington, made his opening statement in this case he talked much about the conspiracy of the Bolands to destroy Judge Archbald, and he undertook to set up as a defense to the offenses of Judge Archbald that the Bolands, and especially William P. Boland, had undertaken and set out resolutely to destroy the judge. Now, suppose that all he said about it was true. Suppose there was a conspiracy existing between the Bolands and others to destroy Judge Archbald. What did they do? Did the Bolands manufacture any testimony against Judge Archbald? Did they turn a hand or say a word or enter into any agreement with anybody for the purpose of manufacturing testimony against Judge Archbald?

It is true that William P. Boland, when Williams brought him one of the letters that Judge Archbald had written, took a photograph of it. But what if he did? The judge wrote the letter. Suppose W. P. Boland did suggest to Williams to have Judge Archbald go to New York to see Brownell. Judge Archbald went. Suppose Boland did suggest to Williams that he have Judge Archbald write the letter to Capt. May for this dump. Judge Archbald wrote it. Suppose Williams and William P. Boland together did jointly dictate the silent-party agreement, in which they agreed to give Archbald an interest in this culm dump. Archbald accepted it.

Now, what else has William P. Boland or either of the Bolands done on which these gentlemen can charge a conspiracy? That is all they did. It may be that William P. Boland, rightfully or wrongfully, it is not for me and it is not for the Senate to say, did start out to get evidence against Judge Archbald in this case. He got it, and in so doing he rendered a valuable public service.

Ah, what a pitiable spectacle this presents; counsel for the respondent, a high judicial officer of the United States, coming into the Senate and pleading that the Bolands had duped and deceived him into doing things which scandalized the high office which he held.

Now, Mr. President, to call the attention of the Senate to the second article, which relates to the Marian Coal Co. transaction. The Marian Coal Co. was a corporation doing business near Scranton in the way of washing coal from one of the coal dumps which had been formed there in some mining operation. The Bolands owned two-thirds of the stock of the Marian Coal Co., and they had been involved in litigation in the district court at Scranton and in the Interstate Commerce Commission. This man Williams suggested to the Bolands one day that he thought George M. Watson, an attorney at Scranton, could get a settlement of all their difficulties and sell this Marian Coal Co. to the Delaware, Lackawanna & Western Railroad.

Now, it was the Delaware, Lackawanna & Western Railroad Co. that was a defendant in the Interstate Commerce Commission in the suit which the Marian Coal Co. had there pending, and this same railroad was a party defendant also in those two cases, No. 38 and No. 39, in which the Erie Railroad Co. was a party, and which were pending at this time in the Commerce Court and about which Judge Archbald said, "I have here on my desk now two cases against the Erie Railroad Co." The Delaware, Lackawanna & Western was in both those cases.

I do not know how it was, and I suppose it will never be known how it happened that George Watson immediately after the Bolands had employed him went direct to the office of Judge Archbald to get Judge Archbald to intercede for him in carrying out the matters for which he had been employed by the Marian Coal Co. After he had talked with Judge Archbald they called Christy Boland over to the office.

It is true Judge Archbald says he does not remember anything about that incident, but I believe that Christy Boland is telling the exact truth when he says that the next day, I think it was, after they had employed Watson, he was called to the office of Judge Archbald, where he found Judge Archbald and Mr. Watson in consultation, and that the judge said, "Now, I understand the agreement to be that you have employed George Watson to settle your difficulties for $100,000 and that you are to give him a $5,000 fee."

That was the testimony which was elicited last evening from Mr. Christy Boland after he was called back on the witness stand. I thought it was in the record on the first examination. I knew that Christy Boland had testified to that fact before the Judiciary Committee. So we called him back to prove it before the Senate, and he testified here as he testified before the House committee that that statement was made there in Judge Archbald's office when those three persons were present.

I think that is extremely important, because Judge Archbald at that time said he would assist Mr. Watson all he could in the settlement of these transactions, and he knew that Watson had

started out and had been employed with authority to settle it for $100,000.

Judge Archbald went to New York, or I will put it just as charitably as I can. I will say that he was in New York, as he insisted it should be stated. It does not make any difference. He was in New York, he says, holding criminal court, and while there he went to the office of Mr. Loomis on the 4th day of August.

Now mark, the 4th day of August was a red-letter day for Judge Archbald in the coal business. He not only went to Brownell and started the transaction with him to buy the Katydid culm dump, but he went to Loomis on the same day, in order to prevail on him to see Watson, with a view of settling the Marian Coal Co.'s difficulties. Loomis, after he had seen him, tells him he will have his people take it up with Mr. Watson and see what can be done. But nothing is done.

A little later Judge Archbald sees Loomis in the city of Scranton and reminds him of the matter again, and urges him to take it up with Watson. He also calls Mr. Phillips over to his house, sends for him by telephone, and urges the negotiations along.

Now, Phillips was the superintendent of the coal properties of the Delaware, Lackawanna & Western Railroad Co. After a consultation there Mr. Phillips says that he told Judge Archbald he did not see any possibility of a settlement, because of the very wide difference of opinion as to the value of the property and the merits of the lawsuit.

Notwithstanding that, he again sees Loomis and talks with him on the street and urges him to take the matter up. Nothing, however, is done.

Then Mr. Loomis writes a letter to him and tells him that there is no possibility of a settlement of the matter because of the very great difference of views as to the value of the property.

That is not sufficient for Judge Archbald. Not content with that, he says out of a pure matter of friendship for George M. Watson, he still pursues the matter with more diligence and more eagerness than ever Watson exercised in the case, and writes Loomis a letter urging further consideration of the case. This is the letter which Loomis wrote to Judge Archbald September 27:

SEPTEMBER 27, 1911.

MY DEAR JUDGE: As per our recent interview, I instructed our people to call on Attorney Watson in connection with the Boland case, and I find there is little, if any, prospect of our reaching any settlement of this case, owing to the very great difference of opinion as to the merits of Mr. Boland's claims and the value of his properties.

Thanking you, however, for your good efforts in this direction, I am,

Very truly, yours,

E. E. LOOMIS.

Judge R. W. ARCHBALD, *Scranton, Pa.*

Then, on September 28, the next day, Judge Archbald replies:

SCRANTON, PA., *September 28, 1911.*

MY DEAR MR. LOOMIS: I am very sorry to have your letter stating that you have not been able to effect a settlement with Mr. Boland. I trust, however, that the matter is still not beyond remedy. And if I thought that it would help to secure an adjustment, I would offer my direct services. I have no interest except to try and do away with an unpleasant situation for both parties, and I hope that this still may be possible.

Yours, very truly, R. W. ARCHBALD.

Then, on October 3, he, nothing daunted, writes again, urging a personal conference and manifesting a zeal and eagerness that was not born of love for Watson, but of a desire to secure a fee which was dependent on the success of the enterprise:

MY DEAR MR. LOOMIS: I understand that there has been a suggestion that Mr. Watson meet you and possibly also Mr. Truesdale, and that Mr. Watson has written asking for an appointment. It seems to me, if I may be permitted to say so, that this is a very good idea. It will give you an opportunity to discuss the Boland claim with Mr. Watson upon a somewhat different basis than Col. Phillips could, representing the coal department.

I have little doubt but that it will appear so to you, and it may be altogether unnecessary for me to write about it. But I am sure you will not take it amiss to have me do so, and I shall hope that a settlement may yet be reached in that way. There is nothing like a personal interview to bring about such a result.

Yours, very truly, R. W. ARCHBALD.

It has occurred to the minds of some Senators, I have no doubt, that the managers have not proven that Judge Archbald got any money consideration or that he was to get any money consideration for this transaction. It is known now to the Senators who heard this testimony that Judge Archbald knew that the proposition of settlement as presented to Watson by the Bolands was $100,000, and it is known by the testimony of Judge Archbald himself that he and Watson proceeded on the theory that it was to be settled for $161,000. It is known, and it is beyond dispute, that after the time Judge Archbald learned that the basis of settlement was $100,000, and after he learned that Watson was asking the railroad company $161,000, after he knew those two facts, he still wrote two letters to Mr. Loomis urging this settlement and saw Mr. Loomis and Mr. Phillips personally about the matter.

Now, Christy Boland testified that Watson told him that his reason for raising it from $100,000 to $161,000 was because he had to divide this excess and take care of certain persons, among whom was Judge Archbald. I have not a bit of doubt on earth but what Watson told that to Christy Boland. But I do not pretend to say to the Senate here to-day that Judge Archbald and Watson had ever had any agreement or understanding about it, because there is no direct evidence to that effect. But all the circumstances point to that very end, and it is competent evidence for this Senate to consider, because of the fact that Archbald and Watson had entered into the conspiracy to do a wrongful thing, collecting $61,000 more than the Bolands demanded, and it being a statement by one of the coconspirators is competent and proper evidence in this case against Mr. Archbald, and is worthy of consideration.

But I desire to impress this fact upon the Senate now, before I leave this subject, that it does not devolve upon the managers, in the Marian Coal Co. case, to prove that Judge Archbald understood that he was to have a cent of remuneration for his services. It is true that the article charges a consideration, but it does not say a money consideration. If he did this, if he sought for the welfare of this man Watson, if he sought for the benefit of a friend, in order that a friend might make a fee, to use his official power to influence litigants in his court to that end, it is an impeachable offense, and he should be found guilty.

Oh, you say maybe it is not so culpable. No; but the offense exists, and it is a misuse of that power which comes to every man who occupies the position of judge.

Now, I call the attention of the Senate to the third article, about Packer No. 3. That was the case where Judge Archbald and Jones and two or three other gentlemen were to organize a corporation for the purpose of buying Packer No. 3. No money was to be paid by any of these gentlemen. John Henry Jones assured them that he could get the money from a gentleman, Mr. Farrell, in New York. So they put it up to Judge Archbald to see the Lehigh Valley Railroad Co., another railroad that was a party defendant in these same suits Nos. 38 and 39. He goes to the Lehigh Valley Railroad Co. He goes to Mr. Warriner, of that railroad company, and prevails on him to sell him Packer No. 3 for the benefit of this new corporation. He writes a letter making an appointment to see Mr. Warriner, fulfills the appointment; it is agreed that they shall have Packer No. 3 for a royalty of 2 and 3 cents on the different grades of coal, and afterwards he gets a letter from Mr. Warriner confirming the agreement.

It will be remembered that Madeira, Hill & Co. had been trying to buy Packers Nos. 2, 3, and 4 a year and a half before that. It seems that at that time the Lehigh Valley Railroad Co. did not want to sell Packers Nos. 2, 3, and 4, even though Madeira, Hill & Co. offered them a royalty of 5 and 10 cents a ton on the coal.

They say it was not the same packers. It is true that Madeira, Hill & Co. applied for Packers Nos. 2, 3, and 4, and that these gentlemen only applied for Packers Nos. 3 and 4. They got the option for 2 and 3 cents. After culm-dump coal had sprung up immensely in value the railroad company sells to Judge Archbald's corporation for less than one-third of the price that they had refused to take from Madeira, Hill & Co. a year and a half before.

Then comes the Warnke deal. Warnke is the gentleman who gave the note to Judge Archbald for $510. Let us see what Judge Archbald did in consideration for that note. It will be remembered that Warnke had been operating a dump and coal property for some time along the Philadelphia & Reading road, and having his property burned down, he failed to operate it for a while. Then the railroad company declared his lease had been abandoned and that he had not any further right because he was operating under a lease that had been assigned to Warnke, but which the railroad claimed was not assignable. Therefore they refused to allow Warnke to proceed again to operate this dump and this colliery.

Warnke tried a number of people. He went to Baer, the president of the Philadelphia & Reading Railroad Co., and he went to Richards time and time again. Mr. Baer says, in his testimony, that he sent numerous other men to him to get the Reading Railroad Co. to allow him to go on and operate it. Finally, as a last resort, Warnke learned of Judge Archbald's influence with the railroads and he goes to him. I think one of the Joneses told him that Judge Archbald could do that for him. So he sees Judge Archbald, and Judge Archbald writes a letter to Richards, the man who has charge of the coal property of the Philadelphia & Reading Railroad Co., making a date at

Pottsville some time in the future. Judge Archbald goes to Pottsville, 80 miles away, to fulfill this appointment with Mr. Richards. When Warnke saw the judge he said, "Now, if you can not get them to renew or revive the lease, which they claim has been abandoned, then see if you can buy the Lincoln culm dump for me." Judge Archbald presented the matter to Richards along that line, and Richards told him "No"; that their answer was final and that they would not allow Mr. Warnke to proceed under his old lease or they would not let to him the Lincoln culm dump.

It is true that Judge Archbald did not succeed in influencing the Philadelphia & Reading Railroad Co. to sell property to his friends at that time, but he tried to. He went just as far as it was necessary for him to go in order to commit the offense charged in this count. He sought to influence them, but failed. It may have been due to the fact that the Philadelphia & Reading Railroad Co. was not in the same position as the Erie, the Lackawanna & Western, and the Lehigh Valley Co.'s were; the Philadelphia & Reading Co. did not have litigation before Judge Archbald just at that time.

Now, there is one other case in which Archbald sought to negotiate two coal transactions.

Before that, however, let me call attention to this with reference to the Warnke case. Judge Archbald returned to Scranton and told Warnke what had happened. Immediately following his effort to get Mr. Richards to comply with Warnke's request, and having failed, he takes up with Mr. Warnke the sale of the Lacoe and Shiffer dump, which was on the Delaware & Hudson Railroad, and from which railroad company a right of way had to be had in order to operate that culm dump successfully.

John Henry Jones testified that when he talked to Warnke about this dump he suggested that they go together to Judge Archbald, because Judge Archbald had had the sale of this dump from Mr. Berry, the secretary of Lacoe & Shiffer Co. So they go to Archbald. Although Archbald's option had expired (Berry says he had granted the option and had extended it from time to time, but that it had expired at that time), notwithstanding that they go to Judge Archbald and have a talk about "Old gravity fill," which was the property of Lacoe & Shiffer. John Henry Jones says that he raised the question as to whether they could get a right of way to operate this dump from the Delaware & Hudson, and that he said there, in the presence of Archbald, to Mr. Warnke that Judge Archbald can take care of that. Anyhow, they bought the old gravity fill. After these events had taken place, after the judge had made a trip of 80 miles to Pottsville to see Richards, and after he had given him advice about the Lacoe-Shiffer transaction, never having put a dollar in it himself, he goes to the office of Mr. Warnke—that is, the Premier Coal Co.—and got this note for $510.

Now there is one other. It is article 6, in which there were two efforts to deal with the railroad companies concerning coal property. You remember hearing a good deal about the Everhart interests. The Everharts owned an interest in 800 acres of coal land. It seems that Mr. Warriner's company, the Lehigh Valley, had some time before that desired to purchase their interest in that property. Dainty tells Judge Archbald about it, and Judge Archbald then goes to see Mr. Warriner. First he has Dainty go to see the Everharts, to see whether or not their interests are purchasable. Then he goes to Warriner and undertakes to get them to agree to buy the Everhart interest in case he and Dainty can get them for sale. While he is there talking with Warriner about that, as Dainty has said to Judge Archbald that he wanted, if possible, to lease from the Lehigh Valley Railroad Co. 320 acres of land, another tract of coal land there, he tried to prevail upon Warriner to get the Lehigh Valley Railroad Co. to rent that land to Mr. Dainty.

Now, Senators, there are the coal cases. There are seven of them where Judge Archbald sought to get property from and to dispose of property to interstate railroads—to five interstate railroads, three of which had litigation then pending in his court.

Let us summarize, now, briefly as to those counts in the indictment. There is the Katydid, owned by the Erie Railroad Co.; he sought to get that. There is the Marian Coal property, which he tried to sell to the Delaware, Lackawanna & Western Railroad Co. There are Packers No. 3 and No. 4, which he tried to buy, and which he really did buy from the Lehigh Valley Railroad Co.

Next came the Warnke deal, in which he attempted to influence the officers of the Philadelphia & Reading Railroad Co. to continue their lease with Warnke or to sell him what was known as the Lincoln dump. Failing in this he undertakes to negotiate another transaction for Warnke by selling to him the dump known as "old gravity fill," owned by Laco & Shiffer, but which required the right of way from the Delaware & Hudson Railroad Co. in order to operate it successfully; and Jones assured Warnke in the presence of Archbald that the judge could take care of that. That makes five instances.

Then Archbald and Dainty conceived the idea of getting the interests of the Everharts in 800 acres of coal land for sale and selling it to the Lehigh Valley Railroad Co. At the same time Dainty conceived the idea that he would like to rent from that railroad 320 acres of other coal land. Judge Archbald readily becomes the intermediary in these transactions, makes an appointment with Warnke, who represents that railroad, and seeks to carry these two proposed transactions to a successful end.

Counsel for the respondent called in witnesses here to prove that there was nothing unusual about other people furnishing money to operate these dumps; they offered to prove that because Farrell was to come from New York to put in all the money necessary to operate Packer No. 3 it was not unusual, but that it was a very common and frequent course of business. Aye, but they did not prove any cases where judges of the United States courts had sought to buy property with money furnished by other persons from railroads which had litigation pending at the time in those courts. This is the only instance, thank God! that the records of our country disclose where that thing was done.

These gentlemen seem not to be able to distinguish between the conduct of a man on the Federal bench and a man in private life. Mr. Dainty and Mr. Jones and Mr. Williams, and all those rounders who seem to infest the city of Scranton—any of them had a perfect right to go to those railroad companies and prevail upon them to sell them their coal properties, if they wanted to do so; but they did not have any right to get Judge Archbald to act as intermediary for them in these transactions, because they knew that he was a judge of the Commerce Court and that a judge of the Commerce Court had no right to render his services by reason of his being a judge to these men for that purpose.

There is a strange thing about this case. There are a number of these men; there are the three Joneses—John Henry Jones, Thomas Star Jones, and Fred Jones—and E. J. Williams, and George M. Watson, and Dainty, and Warnke, and Kizer—all of them dealing more or less in coal properties of different kinds—and somehow, every time they came to a proposition where a railroad company was interested in any of these properties, their trail leads always to the office of Judge Archbald in the Federal building.

Another strange thing about all these cases is that in any of these transactions Judge Archbald never did a thing, never put in a dollar, never wrote a letter, never turned a hand, never did anything, except to intercede with the railroad companies. That is what he was employed for. This was the one thing, the only function, which he had to perform.

Why did they go to Judge Archbald? Because they knew, first, that he was a judge of the Commerce Court; second, because they knew that court had jurisdiction over interstate railroad companies; third, they knew that Archbald would use that influence over the interstate railroad companies; and, fourth, they knew that they could get it for a consideration, and thus it was natural they should use him in their business. Judge Archbald, by his conduct, simply worked up a side-line trade in culm dumps from the mere fact that he did have power over the railroad companies.

Mr. President, I desire to call the attention of the Senate to the Rissinger case. It is true that that occurred when Judge Archbald was a district judge, and that he is not now a district judge. Counsel for the respondent have not raised that question in their brief nor in their opening statement, as I recall.

Mr. WORTHINGTON. We raised it in the brief.

Mr. Manager STERLING. I had overlooked it, if it is in the brief; but I remember that one of the Senators raised the question during the trial of the case as to whether or not the House of Representatives could impeach and the Senate convict for an offense committed during a service which the accused was not performing at the time of the articles of impeachment. I think there is but one Federal case—one Federal precedent—on that point. There are State precedents where the language of the State constitution was similar to that of the Federal Constitution; and in those cases it has always been held that the officer could be impeached even though the term of office during which the offense was committed had expired. I think that is the universal rule in all precedents under constitutions similar to the Federal Constitution.

Without, however, taking the time of the Senate to read any of those authorities, I merely desire to call their attention to

this proposition: Suppose a man had committed some heinous offense, had been guilty of some degrading or debasing conduct while in the public service, something that had brought the office into disrepute, and before that act had been discovered he had been promoted from that office to some higher office; do you say that under the Constitution, and a Constitution, too, in which there are no limitations as to the time of committing these offenses, the people have no redress and that the Congress of the United States has not the power to impeach? Where is the limitation? Where is the Senate forbidden to convict one for offenses committed prior to the service which he is holding at the time?

The Constitution provides that all civil officers of the United States shall be removed from office upon impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. There is nothing in that clause of the Constitution limiting impeachment and conviction to offenses committed during service in the office from which it is sought to remove him. Who has any power to put any limitation to this clause in the Constitution? It would be indeed a dangerous precedent, if precedents were binding, for the Senate to say that the House had no power to impeach and the Senate no power to convict and remove from office an unworthy servant who had committed crimes in private life or during some prior service, but who had not been discovered until after his appointment to the public service.

Let us see what it would lead to. Suppose this argument in this case was closed, suppose every Senator had reached in his mind the conclusion that the respondent ought to be removed from office; that that is the status of the case to-night when adjournment comes, and that during the nighttime Judge Archbald should send his resignation to the President of the United States and it should be accepted, would you say because he was out of office, because his service had expired by resignation, that you could not impeach and convict him?

Remember that there are two judgments which the Senate can impose in impeachment cases—one the removal from office and the other the disqualification from holding any office of honor, trust, or profit under the United States. There would be no occasion, if he should resign, for the judgment of the Senate removing him, because the purpose of that judgment would have been accomplished; but would the Senate be deprived of its constitutional power to impose the other judgment and disqualify this man from ever holding office again simply by the act of the accused himself? Will anybody argue that the respondent, the accused, in impeachment cases, has got the power to take away from the Senate its constitutional right to disqualify him for holding public office? I think that is all that need be said on that point; and, with that in view, I desire to discuss briefly the Rissinger case, which occurred when Judge Archbald was a district judge at Scranton.

It will be remembered that Rissinger had some five or six cases pending against insurance companies for the recovery of a fire loss which had occurred in his coal property, and they had been taken from the State court in Luzerne County to the district court over which Judge Archbald presided. It was on the 3d day of October, 1908, when those cases were transferred to the Federal court. In the latter part of September this man Rissinger had seen Judge Archbald and talked to him about the organization of a corporation to take an interest in a Honduras gold-mining scheme. Those negotiations were on when these cases came into the judge's court, but they continued during all the time that those cases were pending, and, according to the original testimony of this man Rissinger, Judge Archbald virtually agreed to become a partner in the enterprise with Rissinger, without the knowledge of those on the other side of the cases. I will, however, agree now, although Rissinger is our witness in the case, that Rissinger is not a reputable witness, because in this case he comes into the Senate here and testifies to an entirely different state of facts from what he did then; but it is immaterial which horn of the dilemma these gentlemen take in the case, because, in any event, Judge Archbald is culpable and committed an offense for which he ought to be removed from office.

This man Rissinger brings Mr. Russell from New York to lay the matter before Judge Archbald, and he tells him about the wonderful things in that Honduras gold-mining scheme. Then it goes on, and these cases come for trial early in November, I think. During the trial of the first case, after the evidence for the plaintiff—that is, Mr. Rissinger—was submitted and they had closed their case, the defendant demurred to the evidence, and Judge Archbald overruled the demurrer, holding with Rissinger in the case. It may have been proper; I do not know, I do not care, and it is not for the Senate to try the case of Rissinger against the insurance companies, but whether it was a right decision or a wrong decision, all we care for is to know that it occurred while these negotiations were pending between Rissinger and Archbald with reference to this gold-mining scheme.

Then a little later—I think on the 28th day of November, the very day that the judgments in those cases matured—you remember, after the judge held the evidence sufficient to sustain a case, they settled the case for something like $25,000, to be paid in 15 days—the very day those judgments matured Mr. Rissinger makes a note to Judge Archbald for the sum of $2,500. Archbald indorses the note, turns it back to Rissinger, and Rissinger takes it to the bank and gets the money on it. Now, that is not the material part in the proposition at all.

Rissinger said before the Judiciary Committee that the agreement at that time was that Judge Archbald was to pay one-third of the note and take the value of that third in stock of the Honduras gold-mining scheme. In any event, in a very short time after that and before the note had matured—it was a four months' note—84 shares of stock of the Scranton-Honduras Mining Co., which was to take a part of the property of this gold-mining scheme in Honduras, were delivered to Judge Archbald. Judge Archbald said it was collateral security for the note, but this stock on its face was only worth $1,680 at $20 a share. It was not delivered to Judge Archbald at the time he indorsed the note and turned it over to this man Rissinger. That would have been the time when one would generally take collateral security, and when one takes collateral security they generally take a little more than the amount of their liability instead of very much less; and when one indorses stock as collateral security for liability on a note the man who gets the benefit of it generally assigns his stock over to the party that indorses it, but this stock was issued direct from the corporation to Judge Archbald and delivered to him some two months after he had indorsed this note.

I want to call the attention of the Senate to another fact. I shall not read it, but I trust that one of the other managers in this case will read the statute of the United States on bribery. It provides that any judge who takes anything of value with a view of influencing his decision, or after a decision receives anything of value on account of it, is guilty of bribery, even though it did not influence his judgment. Even though it did not influence his decision, it is bribery.

Is there a more charitable construction that can be put upon the conduct of Judge Archbald in receiving this present? Rissinger now says the judge never paid a cent for this stock and he never expected him to pay a cent for it. It was simply a present to Judge Archbald of this stock in this gold-mining scheme after the decision of the judge in favor of Rissinger. Is there a more charitable construction, I ask you, than the one I have suggested in this instance? If there is, I agree that it is the duty of Senators to adopt it. If we can eliminate from our minds the fact and the thought that Rissinger was a litigant in Judge Archbald's court, if we can eliminate from our minds the thought and the knowledge that Judge Archbald presided over the court in which Rissinger was a litigant, then we may put another construction on this transaction. Rissinger was there in Scranton to sell stock in this gold-mining scheme, and he, like many another faker who has undertaken to defraud the public in transactions of this kind, went to men of influence in that community. It seems the person first of all to whom he appeals is Judge Archbald. He enlists him in the enterprise. He gets his name connected with the enterprise in order to do what? To sell stock to other people in Scranton. Judge Archbald had no personal knowledge of this scheme in Honduras; he had no knowledge at all, except what he had gotten from an entire stranger, George Russell, who came to see him from New York. Is this man, who had sat, as he has said, for 29 years upon the bench listening to cases of this kind, listening to contentious lawyers during all of this time—is this man so guileless that it never occurred to him that Rissinger wanted his name to influence other men to go into this scheme?

Aye, Senators, a judge who will sell his name for a consideration to any kind of an enterprise, good or bad—and the chances are a hundred to one that this one was bad—a judge who will sell his name to any kind of an enterprise to influence other people less experienced than he perhaps—and I know there are people in Scranton who, if they saw Judge Archbald's name connected with this gold-mining scheme, would say, "That must be good," because it has been proven here to the Senate that his reputation in Scranton was A number 1, and I know the use of his name would have its influence in misleading people to invest their money and their property in that get-rich-quick scheme—a judge who will do that, a man who will do that, is not fit to sit on the Federal bench.

I next call attention, Mr. President, very briefly to the Helm Bruce case. I think that Senators who listened to the testimony of Judge Archbald are of the opinion that the corre-

spondence which Judge Archbald had with Helm Bruce about that case reversed the first decision of the court and compelled a different decision from the one the court had first agreed upon. Is it sufficient to say that the final decision was right? I do not know whether it was or not, and I do not care; neither do Senators care whether the last decision was right or whether the first decision was right. At any rate, it developed that when all the judges of the Commerce Court, except Judge Archbald, were in favor of deciding the case in favor of the Board of Commerce of New Orleans and against the Louisville & Nashville Railroad Co., Judge Archbald held out for the railroad company, and then began this correspondence with Helm Bruce about the evidence of one Compton. He did not tell the other members of the court what he had done; never telling the counsel on the other side what he had done or never giving them notice. Then, after this man Bruce had sent this correction in—and it may have been a perfectly proper correction; I do not know; he might have been right about it—the judge writes to him again, and Bruce submits another argument, a long argument, on some phases in the case. That was as late as January. After that the court filed an opinion exactly opposite from that on which they originally agreed, and that final opinion was filed in the month of February. I believe that the inevitable and logical and reasonable conclusion is that Judge Archbald, by reason of this assistance from Helm Bruce, was able to convince the court that their first decision was wrong, and compelled them to reverse it.

But suppose it is a righteous decision, what does the other fellow think about it when he was deprived of the right to come before that court and present his side of the contention about which Helm Bruce wrote to Judge Archbald? That is the question, Senators; and I say that it seems to me that we are impelled to the conviction that Judge Archbald was determined—and I am inclined to think that he was wrongfully determined—to have that case decided in favor of the Louisville & Nashville Railroad Co. The reason I think he wrongfully sought to do it was because he kept all his transactions with Helm Bruce in utter secrets, both from his colleagues on the bench and from the attorneys on the other side of the case. If he had disclosed the transaction to them, if he had sent a copy of the letter that he wrote to Helm Bruce to the lawyers on the other side of the case, how easy it would have been to have given them an opportunity to reply. Is it possible that a man on the bench for 29 years does not better understand the ethics of the bench than that? The first thing those of us who are lawyers learned in the practice of our profession was that it was always unethical to do anything in a case without giving the lawyer on the other side due notice; yet Judge Archbald, standing here as he does, pretends to tell the Senate that it was innocently done and that it never occurred to him that it was bad ethics.

Now, just a word about the appointment of this man Woodward as jury commissioner. I do not maintain that the offense consists of appointing a railroad lawyer jury commissioner. I mean by that that the mere fact that he was a railroad lawyer does not in itself constitute the offense. If Judge Archbald had appointed any man who had one general line of litigation and one class of clients and always appeared in court for that class of clients on the same particular side of that litigation, the appointment of any lawyer who occupied that position at the bar would be the same kind of an offense, whether he represented railroads or whether he represented some other class of citizens. Suppose the farmers in a community had in some court a long line of litigation of the same kind and character and that they joined together and employed one lawyer to try the cases and to represent them in court, and suppose the judge should appoint that lawyer jury commissioner to select the jury that was to try those cases. It is the possibilities of wrong that renders such a thing offensive to a fair-minded man.

The offense does not consist in the fact that Woodward represented railroads, but that he was a lawyer who represented one particular class of clients and appeared in court on one side of litigation. If Woodward had to-day represented the railroad company and to-morrow had represented the railroad employees, the next day had represented the injured passenger, the next day the shipper, and the next day the farmer who had had his stock killed by reason of a bad fence along the right of way, it would not be so bad, for then Woodward could not have packed a jury on his side of all those cases, because when he was packing it for himself on one case he would be packing it against himself on the case he would try to-morrow. There is the offense and the indiscretion.

Aye, gentlemen, do you ask the question, Would you remove Judge Archbald for appointing Woodward jury commissioner when it is not proven here that Woodward ever exercised his power wrongfully? Do you say now, honor bright, would you remove him from office for that? No; I would not if it stood alone, but it is a part of the system; it goes to make up the system; it is an incident in the line of misconduct which has been carried on by Judge Archbald. Do you ask the question, Would you impeach and convict Judge Archbald and remove him from office for his correspondence with Helm Bruce? I speak for myself when I say no, I would not, if that stood alone; but it is a part of the system; it is one fact which dovetails into this line of conduct which he has carried on with the railroads, and it is a system so rank that "it smells to heaven."

Mr. President, I have said all I care to say on the facts in this case. The evil that arises from that course of conduct that has been pursued by Judge Archbald is the effect that it has upon the public mind. That is the most serious evil. It has the tendency to create in the minds of the people a sentiment that their Government is not being honestly administered. These times are pregnant now with that sentiment, and the great and serious responsibility devolves upon those entrusted with the power to purify the public service, to seek out the evildoers and give the public their just relief from maladministration in public office. It is not within the power or the right of Congress to pardon or excuse. The people never delegated that power to us, and for us to seek to excuse the evildoer would be an usurpation. It is our plain duty to purge the public service of such a man. The people should not be bound to submit to his dominion. His course of conduct is such that under the Constitution his tenure of office is ended. That instrument says he shall hold his office during good behavior. In determining what is misbehavior in office we do not ask you to measure Judge Archbald by the standard of your highest ideals. Measure him by the average judge, State or national, and your estimate of him will be that he is unworthy and should be removed from office.

The evil that comes from Judge Archbald's conduct is the fact that it shakes the faith of the people in that branch of government which is the very foundation source of justice. Among all the great responsibilities of Congress the one that stands above them all is their duty to purify and keep undefiled the judiciary. Within the breast of every just and upright judge repose the seeds that grow and blossom and ripen into better, freer institutions.

The people have nowhere to go, under that instrument which they denominate their Constitution, but to the House for articles of impeachment. I believe the House has done its whole duty in this case, and likewise the people under that great instrument have nowhere to go for the trial and conviction of unworthy servants except the Senate, and we confidently hope the Senate will do its full duty in the premises in this case. May the people always turn to that great instrument as their refuge and their harbor.

And so for this, Mr. President, we, as managers on the part of the House, ask you to remove this man from the office with which you honored him because he has dishonored it. We ask you to strip him of the ermine with which you clothed him because he has sullied it.

Mr. Manager CLAYTON. Mr. President, I believe it is now six minutes after 3 o'clock, and Mr. Manager WEBB will next address the Senate.

ARGUMENT OF MR. WEBB, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager WEBB. Mr. President, the respondent's counsel, in his brief filed during the holidays, devotes 26 pages to a discussion of this proposition, "Impeachment lies only for offenses which are properly the subject of a prosecution by indictment or information in a criminal court."

I think it will not be amiss, Mr. President, to discuss that proposition on behalf of the managers for a little while. It is true that in those 26 pages of argument most of the quotations are from counsel who have appeared for respondents in various impeachment trials. I do not remember just at present a single noted constitutional authority that counsel quotes to maintain that proposition.

I wish to quote an early authority in opposition to this position. Wooddesson, in 1777, said:

"It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. On this policy is founded the origin of impeachments, which began soon after the Constitution assumed its present form" (p. 355).

Rawle, in his work on the Constitution—and everyone will acknowledge him universal authority on the Constitution—says:

"The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of

foreign States, *or the baser appetite for illegitimate emoluments*, are sometimes productions of what are not unaptly termed 'political offenses' (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law."

Judge Story says on this subject:

"In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law and many of a purely political character have been deemed high crimes and misdemeanors worthy of this extraordinary remedy."

Tucker, in his work on the Constitution, says—

"These two cases"—

Discussing the two in which impeachments and convictions occurred—

"These two cases, therefore, show that the words 'high crimes and misdemeanors' can not be confined to crimes created and defined by a statute of the United States."

In a footnote to Fourth Blackstone (p. 5, Lewis's ed.), Christian says:

"The word 'crime' has no technical meaning in the law of England. It seems, when it has a reference to positive law, to comprehend those acts which subject the offender to punishment. When the words 'high crimes and misdemeanors' are used in prosecutions by impeachment the words 'high crimes' have no definite signification, but are used merely to give greater solemnity to the charge."

In Cooley's Principles of Constitutional Law it is said (p. 178):

"The offenses for which the President or any other officer may be impeached are any such as are in the opinion of the House deserving of punishment under that process. They are *not necessarily offenses against the general laws*."

In his work on the Constitutional History of the United States, George Ticknor Curtis says (vol. 1, pp. 481–482):

"But a cause for removal from office may exist where *no offense against positive law has been committed*, as where the individual has, from immorality or imbecility or *maladministration*, become unfit to exercise the office. The rules by which an impeachment is to be determined are, therefore, peculiar and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer."

In Watson on the Constitution (vol. 2, p. 1034) it is said:

"Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct. In the few cases of impeachment which have hitherto been tried *no one of the charges has rested upon any statutable misdemeanors*. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the State at large."

The American and English Encyclopedia of Law, which is an acknowledged authority, says:

"In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses *not indictable either at common law or under any Federal statute*, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were *such as constituted neither a statutory nor a common-law crime*. The impeachability of the offense charged in the articles was, in most of the cases, not denied."

Mr. Bayard, in Blount's trial, said:

"Impeachment is a proceeding of a purely political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity." (Wharton's State Trials, 263.)

Story on the Constitution (p. 583), as has been quoted before, says:

"In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanors.

"The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privileges and offenses not defined by any positive laws) has been upheld by the Supreme Court stands upon similar grounds; for if the House had no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law it is clear that the process of arrest would be illegal.

"In examining the parliamentary history of impeachments, it will be found that many offenses, not easily definable by law and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy."

One can not but be struck in this slight enumeration with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the policy of the state and of sufficient dignity to maintain the independence and reputation of worthy public officers, citing again the American and English Encyclopedia of Law (vol. 15, p. 1006).

The cases, then, seem to establish that impeachment *is not a mere mode of procedure for the punishment of indictable crimes;* that the phrase of "high crimes and misdemeanors" is to be taken, not in its common-law but in its broader parliamentary sense; and is to be interpreted in the light of parliamentary usage, that in this sense it includes not only crimes for which an indictment may be brought but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, *and even gross improprieties by judges and high officers of state; although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute.*

Cushing's Law and Practice of Legislative Assemblies (p. 980, par. 2539) says:

"The purpose of impeachment in modern times is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law or which no other authority in the State but the supreme legislative power is competent to prosecute."

In the Peck case (p. 308) Mr. Manager Wickliffe said:

"The term 'misdemeanor' covers every act of misbehavior in a popular sense. Misdemeanor in office and misbehavior in office mean the same thing. (7 Dane Abgt., 365.) Misbehavior, therefore, which is a mere negative of good behavior, is the express limitation of an office of a judge."

Mr. Manager Palmer said in the Swayne impeachment trial:

"We may, therefore, conclude that the House has the right to impeach and the Senate the power to try a judicial officer for any misbehavior or misconduct which evidences his unfitness for the bench without reference to its indictable quality. All history, all precedent, and all text-writers agree upon this proposition. The direful consequences attendant upon any other theory are manifest.

"The word 'misdemeanor' used in the parliamentary sense as applied to offenses means maladministration, misconduct not necessarily indictable, not only in England but in the United States.

"*Removal of a judge for misbehavior or lack of good behavior is impossible unless it can be done through the impeaching power. Otherwise the people are powerless to rid themselves of the most unworthy, disgraceful, and unfit official.*"

Judge Curtis, in his History of the Constitution (pp. 260, 261), says:

"The purposes of an impeachment lie *wholly beyond* the penalties *of the statute or the customary law*. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that either in the discharge of his office or aside from the functions he has violated a law or committed what is technically denominated a crime; but a cause for removal from office may exist where *no offense against positive law is committed*, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office."

In the Commentaries on the Constitution of the United States, by Roger Foster, volume 1, page 569, this statement is made:

"The object of the grant of power was to free the Commonwealth from the danger caused by the retention of an unworthy public servant."

Again, on page 586, this statement:

"The Constitution provides that 'the judges, both of the Supreme and inferior courts, shall hold their office during good behavior.'

"This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and *judicial misconduct is not indictable by either a statute of the United States or the common law.*"

In Story on the Constitution (5th ed.), section 796, it is said:

"Is the silence of the statute book to be deemed conclusive in favor of the party until Congress has made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked (citing Rawle on the Constitution), the

power of impeachment, except as to the two expressed cases, is a complete nullity and the party is wholly dispunishable, however enormous may be his corruption or criminality."

Rawle, again, on the Constitution, page 211, says:

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law."

In Story on the Constitution, volume 1 (5th ed.), page 584:

"800. In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law and many of a purely political character have been deemed high crimes and misdemeanors worthy of this extraordinary remedy."

John Randolph Tucker, in his Commentaries on the Constitution, volume 1, section 200, says:

"To confine the impeachable offenses to those which are made *crimes or misdemeanors by statute or other specific law* would too much constrict the jurisdiction to meet the obvious purpose of the Constitution, which was by impeachment to deprive of office those who by *any act* of *omission or commission showed clear and flagrant disqualification to hold it.*"

Mr. Cooley, in his Principles of Constitutional Law (p. 178), discussing impeachment against the President and Vice President, says:

"The offenses for which the President or any other officer may be impeached are any such as, in the opinion of the House, are deserving of punishment under that process. They are not necessarily offenses against the general law."

Curtis, in his Constitutional History of the United States, volume 1, pages 481 and 482, says:

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office."

In Watson on the Constitution, volume 2, page 1034, published in 1910, it is said:

"A misdemeanor comprehends all indictable offenses which do not amount to a felony, as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, etc. These seem to be the terms of these definitions at common law, but it would be strange if a civil officer could be impeached for only such offenses as are embraced within the common-law definition of 'other high crimes and misdemeanors.' Synonymous with the term 'misdemeanor' are the terms 'misdeed, misconduct, misbehavior, fault, transgression.'"

In American and English Encyclopedia of Law (vol. 15, pp. 1066–1068) it is said:

"If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law; then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessary to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very eminent authority, but the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate. In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses *not indictable either at common law or under any Federal statute, and in almost every case brought* offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor a common-law crime.

"The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of *indictable crimes;* that the phrase 'high crimes and misdemeanors' is to be taken not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruption, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, *and even gross improprieties by judges* and high officers of State, although such offenses be not of such a character to render the *offender liable to an indictment either at common law or under any statute.*"

Now, Mr. President, that much I have said on the question of the necessity of showing an indictable offense before the Senate can impeach. There is another clause in the Constitution which we hope, if it has not already been vitalized, to revitalize and bring to the attention of the Senate and ask you to give it some power and force and tell us by your verdict what it means.

If the Constitution, Article III, section 1, means anything, then we want to bring it before the Senate to-day and ask Senators to say what it does mean when it provides that judges of the Supreme Court and inferior courts shall hold their offices "during good behavior."

The provision in Article II of the Constitution, section 4, Mr. President, refers to impeachment of the President, Vice President, and other civil officers for treason, bribery, or other high crimes and misdemeanors; but later on in that same great instrument, after Article II had been adopted, the constitutional fathers say the judges of the United States shall hold their offices "during good behavior."

It has been pointed out by many constitutional writers, and you yourselves see, that the people have no way of getting rid of a judge who has violated this provision by misbehavior except it is done by this great body. What does "during good behavior" mean?

The Century Dictionary says:

"During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as an office held during good behavior."

Mr. Foster, in his work on the Constitution, page 586, makes this statement:

"The Constitution provides that 'the judges both of the Supreme and inferior courts shall hold their offices during good behavior.'"

This necessarily implies that they can be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

Says Elliott in his debates on the Constitution:

"Mr. Dickinson moved as an amendment to Article II, section 2, after the words 'good behavior,' the words, '*Provided*, That they may be removed by the Executive on the application of the Senate and the House of Representatives.'"

This was in respect of the judges.

Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

But, mark you, the object then was to remove for bad behavior, but to give them a trial, as the Senate is doing in this particular case.

Judge Lawrence, in the Johnson impeachment case, page 643, says:

"Impeachment was deemed sufficiently comprehensive to cover every proper cause for removal."

In Watson on the Constitution, the proposition is stated as follows (vol. 2, pp. 1036–1037):

"What will those who advocate the doctrine that impeachment will not lie except for an offense punishable by statute do with the constitutional provision relative to judges, which says, 'Judges, both of the supreme and inferior courts, shall hold their offices during good behavior'? This means that as long as they behave themselves their tenure of office is fixed and they can not be disturbed. But suppose they cease to behave themselves? When the Constitution says, 'A judge shall hold his office during good behavior,' it means that he shall not hold it when it ceases to be good."

I suppose the argument in the Federalist, Mr. President, had as much to do with the adoption of the Constitution of the United States as any other authority. I quote:

"The principle of this objection would condemn a practice which is to be seen in all the State governments, if not in all the governments with which we are acquainted; I mean that of rendering those who hold offices during pleasure dependent on the pleasure of those who appoint them." (Federalist, p. 306.)

And that is yourselves, Senators, for the President nominates judges and you appoint them.

According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices *during good behavior*, which is conformable to the most approved State constitutions. (Federalist, p. 355.)

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behavior* as the tenure of judicial offices, in point of duration, and that so far from being blamable on this account their plan would have been inexcusably defective if it had wanted this most important feature of good government. (Federalist, p. 361; Publius.)

Mr. President, after counsel for the respondent has discussed in 26 pages of his brief the proposition that the respondent is

not impeachable unless he is indictable, he then makes this concession—that if it is not necessary to prove indictable offenses against the judge, it is necessary, at least, to prove some offense of a criminal nature.

Mr. President, after all crime is nothing but misconduct. The only thing that is made criminal in this country is some form of misconduct.

Before proceeding to argue the facts in the case, I maintain that any judge of a high court who will dicker and traffic with litigants in his court while their cases are pending ought to be indictable, because such conduct is criminal in its nature, and the reason it has not been made indictable long ago is because the people of the United States have never thought it necessary to surround the judiciary with such a statute.

The charges here, therefore, are criminal in their nature, in all good conscience, and I do not know but that the result of this impeachment trial may bring forth a statute making indictable such offenses as are admitted by this judge in this case. Many a man has served upon the chain gang or has been consigned to the county jail for offenses much less criminal in their nature than those which this judge here has admitted that he has been guilty of. It ought to be indictable for a judge of a high court who is embarrassed financially to send his worthless note to a litigant in his court and ask that it be discounted. All of the charges that are admitted here and proven, too, are, Mr. President, in good conscience and in good morals criminal in their nature.

I believe counsel for respondent also takes the position in his brief that this judge is not impeachable now as a circuit court judge for acts which he committed as a district court judge. Mr. President, just a few words on that point. There is no merit in the argument that this respondent can not be impeached at present for acts committed by him while he was district judge. It is true that he is now a circuit judge, but it is also true that immediately before he became a circuit judge he was a district judge. He never ceased to be a judge or civil officer of the United States.

During the last 12 years he has only been elevated one rung in the judicial ladder. His office as judge under the United States has been continuous since his appointment as district judge 11 years ago. This question was raised in the impeachment trial of Judge D. M. Furches in North Carolina in 1901. There the respondent was impeached while he was chief justice of North Carolina for acts committed while he was an associate justice, two distinct and separate offices, but his defense did not avail. Both the authorities and reason compelled the repudiation of such a defense, and, to use the language of Judge William R. Allen, now of the supreme court of our State, then one of the managers in the Furches impeachment trial:

"The purpose of impeachment is to remove an officer whose conduct is a menace to the public interest, and it would be strange, indeed, if he could escape punishment by being elevated to a higher official position. If such a defense could be sustained, one could by resignation avoid an investigation into his conduct by a court of impeachment, and if he was of the same political faith as the head of the executive department, and in sympathy with it, he could be transferred from one office to another, and thus avoid impeachment altogether. The effect of such defense would be to practically destroy the power of impeachment, and, at any rate, it would be greatly impaired. We believe that the authorities are practically unanimous in sustaining our contention that the change of office does not affect the power of impeachment. He is now exercising the same powers that he exercised when he was an associate justice. He is performing the same duties. He is practically filling the same office."

Mr. Foster, on this subject, says:

"The power of impeachment is granted for the public protection, in order to not only remove, but perpetually disqualify for office a person who has shown himself dangerous to the Commonwealth by his official acts. The object of this salutary constitutional provision would be defeated could a person by resignation from office obtain immunity from impeachment. State senates have sustained articles of impeachment for offenses committed at previous and immediately preceding terms of the same or a similar office."

Is it not true that Judge Archbald now holds a similar office to that which he held in 1908? He is now a circuit judge, and the powers and duties of district and circuit judges are almost identical. In the case of State against Hill, to be found in the Thirty-seventh Nebraska Reports, we find this language:

"Judge Barnard was impeached in the State of New York during his second term for acts committed in his previous term of office. His plea that he was not liable to impeachment for offenses occurring in the first term was overruled.

"Precisely the same question was raised in the impeachment proceeding against Judge Hubbell, of Wisconsin, and on the trial of Gov. Butler, of this State, in each of which the ruling was the same as in the Barnard case. There was good reason for overruling the plea to the jurisdiction in the three cases just mentioned. Each respondent was a civil officer at the time he was impeached, and had been such uninterruptedly since the alleged misdemeanors in office were committed. The fact that the offenses occurred in the previous term was immaterial."

I am still quoting from the Supreme Court of Nebraska:

"The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is attained and the reason for his impeachment no longer exists. But if the offender is still an officer he is amenable to impeachment, although the acts charged were committed in the previous term of the same office. The ruling of the Senate of the United States upon the impeachment of William W. Belknap also furnishes a precedent for our contention. Prior to the adoption of the articles of impeachment against Belknap he tendered his resignation to the President, and it was accepted, and upon his trial he interposed a plea to the jurisdiction on the ground that he had ceased to be an officer and was not liable to impeachment, and this plea was overruled by the Senate."

We have, then, five precedents, one by the Senate of the United States, one by the Senate of New York, one by the Senate of North Carolina, one by the State of Wisconsin, and another by the court of impeachment of Nebraska, indorsed by the Supreme Court of Nebraska and by Foster in his work on the Constitution.

We therefore confidently maintain that the respondent in this trial is now impeachable for acts which he committed while district judge of the middle district of Pennsylvania.

I shall not go into the discussion of the origin of impeachment trials, but will just quote this excerpt from one constitutional writer. Mr. Foster, in his splendid work on the Constitution, says:

"Impeachment trials are a survival of the earliest kinds of jurisprudence, when all cases were tried before an assembly of the citizens of the tribe or State. Later, ordinary cases, both civil and criminal, were assigned to courts created for that purpose, but matters of great public importance were still reserved for a decision of the whole body of citizens, or subsequently, of the council of elders, heads of families, or holders of fiefs."

This arrangement could be preserved in earlier times when population was sparse and business intercourse small and human affairs were not intricate; but as civilization became more complex and the division of labor in administering judicial affairs became more urgent, the right to decide and pass upon various questions was allotted to different officers, and so, to-day, we have a judicial system in which all judicial power is lodged, but distributed to different courts, but in all this evolution and distribution of judicial power there is one great right which the people have always reserved unto themselves, and that is the right to supervise the conduct of public officials, and, through their representatives, to remove such officials from office for misconduct or misbehavior, and so, Senators, you sit to-day, theoretically at least, as the court of 90,000,000 people, who have commanded us through the popular branch of Congress to bring this respondent before you to inquire into his conduct and ascertain if the condition on which he was appointed to the high office which he now holds has not been broken by him.

Quoting Foster again:

"What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men?"

This right to inquire into the conduct of public officials has been reserved to the people themselves, and this great Senate is the tribunal in which such questions must be tried, and necessarily and properly the powers of this court are "broad, strong, and elastic, so that all misconduct may be investigated and the public service purified." The fathers of the Constitution realized the importance of reserving unto the people the right to remove an unworthy or unsatisfactory official, and they were indeed wise in not attempting to define or limit the powers of the Court of Impeachment, but left that power so plenary that no misconduct on the part of a public official might escape its just punishment.

It is not by inadvertence that the Constitution is not more specific in regard to the powers and duties of the Court of Impeachment.

Judge Cooley, in an article written for the Encyclopædia Britannica, speaking of the provisions of the Constitution, says:

"But the constitutional provision was necessarily left vague and very much at large in view of the absolute impossibility

of specifying by enumeration or description in advance the infinite variety of ways in which public officers may so conduct themselves as to render their further continuance in office a public scandal or a public danger."

Now, Senators, let us for a little while, as briefly as the occasion will permit, examine the evidence in this case and arrive at the conclusion as to whether or not the respondent has been guilty of any conduct which justifies his removal from office.

Mr. President, in the consideration of the evidence and the law in this case, we shall ask the calm and deliberate consideration of each Member of the Senate, and shall expect that he shall pronounce such verdict as his mind and conscience dictate.

In this proceeding we should simply apply common sense to common facts in an uncommon case. It is an uncommon case, because never in the history of this great trial body have so many misdemeanors, so much misconduct, and so many gross improprieties and ugly facts been proven on a United States judge. I believe that never before in the history of trial bodies has a defendant admitted so many damaging facts, and yet asked his triers to draw from these facts a conclusion of innocence. This respondent's conduct, Mr. President, both upon the proof and upon his admissions, has been wrong and reprehensible, gross and inexcusable.

Mr. President and Senators, under the first article of impeachment it is charged that Judge Archbald used his influence as a United States Commerce Court judge to secure from the Erie Railroad Co. the culm bank known as the Katydid culm bank. I shall not discuss the details of it. It would be wearisome probably to you, because you have just heard it discussed in a most excellent manner by Mr. STERLING. But I do wish to point out some few points in the testimony which may have escaped you.

In the first place, Mr. President, there is a general charge that this judge has been guilty of culm-dump mongering from the time he became a Commerce Court judge until the time he was overtaken. I have a list of letters here that the judge has written about culm dumps beginning the 31st of March, 1911, and winding up when it was whispered around Scranton that this matter was being investigated. It covers two pages and a half, beginning March 31 to Mr. May and on down to March 12, 1912, to Mr. Bruce. There are some 50 or 60 of these letters, I believe. Nobody knows how many personal conversations there were; nobody knows how many phone calls there were. I really do not see how this high court judge could have done much judicial work on the bench and attended to all these numerous culm-dump transactions with the various litigants in his court which are in evidence here. He seems to have started out with the idea that he was probably not worldly wise, as some of the witnesses said, and I guess he was not; and he began to trade and traffic in what? In money? No. Did he have any experience in the coal business? No. He never owned a washery. I do not know that he ever saw a culm dump. He never mined coal. He had no financial standing. What was he trafficking in from the beginning of his career, just after he was put on the Commerce Court bench, when the railroads came under his jurisdiction, until the present time? He had nothing to traffic in except his *influence* as a judge.

Senators, you can read this testimony from one end of it to the other and that is the only conclusion that you are driven to, because I say again he had no experience in coal dumps; he had no knowledge of coal property; he had no financial standing. All that was left him to make gain for himself was traffic in that sacred influence derived from the office of judge. Paul, in writing to his beloved Timothy, from many years of ripe experience, said:

"And having food and raiment, let us be therewith content.

"But they that will be rich fall into temptation and a snare, and into many foolish and hurtful lusts, which drown men in destruction and perdition.

"For the love of money is the root of all evil."

The judge seems to have adopted as soon as he went on the Commerce Court bench and on the district court bench old Ben Jonson's advice, where he says:

> "Get money; still get money, boy,
> No matter by what means."

Or, as Pope says in his imitation of Horace:

> "Get place and wealth, if possible, with grace;
> If not, by any means get wealth and place."

The judge has sorely violated the proprieties of his office in order to make these advantageous contracts. The beginning of his advantageous contracting, so far as his position as Commerce Court judge, was with the Erie Railroad Co., which had a suit pending in his court from April, 1911, until the present time. I believe it has been decided by the Supreme Court in the last few months.

That case was argued in the Commerce Court, I believe, some time in May, 1911—between April and May. It was appealed to the Supreme Court on the preliminary injunction which Judge Archbald's court had granted. Therefore, this Erie Railroad case, known as the Lighterage case, was still pending in the judge's court at the time he secured for himself and Williams the option on the Katydid dump.

Now, Mr. President, I do not know what manner of man old man Williams is, but I can not have a good opinion of a Federal judge who is the almost constant companion of such men as E. J. Williams, Fred Warnke, John Henry Jones, Rissinger, Dainty, the man who was off fishing and automobiling when the House of Representatives was seeking his testimony here. I say his business companions and associates show his ideas of propriety are very, very low, and we may expect to find in such a man almost a seared judicial conscience when it comes to propriety.

Old man Williams knew the power of Judge Archbald. "Now, Judge, if you will give me a letter to May I can get this culm dump." But the judge was not going to let Williams get that culm dump on his own account. He did not give him an introduction. It was something like the Watson deal to settle with the Delaware, Lackawanna & Western Railway. Watson wanted an introduction to the railroad. Old man Williams wanted an introduction to May in order to get something from the railroad. Judge Archbald said: "No; I will not introduce you exactly. I will write a letter and inquire if we can buy it." He says in his answer that at the time he wrote the letter, or later, he was informed that he and Williams could each make two or three thousand dollars from resale of the dump. Two or three thousand dollars is a good amount of money for a man to make on one little transaction of this kind. The judge had that at stake in pursuing the Erie Railroad Co. for the possession of the option on the Katydid culm dump. And he did pursue it.

Did you ever see such a persistent pursuit of a railroad corporation in your life? Then he wrote May a letter. May finally told him that Vice President Richardson was coming down to Scranton before a great while, and he would take the matter up with him. That was along in May or June. He said: "I will take up this Katydid transaction with him." It is contrary to the policy of the Erie Railroad Co.," he says, "to part with its culm banks, but I will take it up with Richardson, who is the vice president." Mr. May, although unwilling as he was, swore that he did take it up with Richardson in Scranton, and that he and Richardson came to the conclusion that they would not sell the dump.

Senators, it is one point that should be remembered, that after the judge had made this application through old man Williams, the vice president of the road and Mr. May had concluded that they would not sell. The judge did not like that, evidently. He said in his testimony that he did not know that Richardson had been at Scranton and that they had arrived at that conclusion. He further said that Mr. May passed by his office practically every day going to lunch. Yet he did not know that Richardson and May had come to the conclusion that the railroad company would not part with this piece of property. He found that the proposition had been turned down somehow. Old man Williams no doubt was worrying the judge and May, and finally Williams comes back and says, "Judge, I do not believe that we can get this option; May talked very gruff to me."

Now, Senators, the judge has some spirit about him. If you will remember, he showed it on the witness stand. Williams described before Wrisley Brown in Scranton and before the Judiciary Committee before he swore here in the Senate Chamber just exactly what the judge did and said. He said the judge got excited and said, "I know their lawyer, Brownell." Yes, Brownell had just argued this Lighterage case about a month and a half before that before the judge in the Commerce Court. He said, "I know their lawyer, Brownell, and I will go to New York and see him, and I may hurt May." Williams said he did not refer to the Erie Railroad officials. He said, "I may hurt him, May, for refusing so small a favor." Then old man Williams said before Wrisley Brown, when he was fresh from these happenings, "the judge said, 'I have two cases here now that I have just decided for them.'" And he did have two cases lying on his desk, because the judge said yesterday in his testimony he had the record and the briefs of the Lighterage case and the Joint Rate case, to both of which the Erie Railroad Co. was a party defendant, in his office in Scranton. He said, "I have just decided two cases for them." Those cases had been argued and appealed on a preliminary injunction to the Supreme Court.

Old man Williams could not have known, Senators, what were those cases. The judge says, "Lighterage cases." Williams swore that he never knew Brownell's name; he never heard of Brownell. He said, "I never heard of lighterage in my life until the judge then and there described it. 'Lighterage,' he says, 'is these tugboats that haul box cars across the river from New York.'"

Who told him about it? That was told shortly after the Lighterage cases had been decided by the Commerce Court. He said the judge told him about it, and said:

"I will go to see Brownell," the man who argued the cases before him and in whose favor the decision was rendered in the preliminary injunction. "I will see him and may hurt May for not granting this favor."

I may say, Senators, it is perfectly evident to you all that the Judiciary Committee and the managers have been handicapped in this case, because it is apparent that we have had to go to the judge's own friends, companions, and business associates to get this testimony, and the testimony we have gotten has been practically wrung from unwilling witnesses.

Old man Williams goes upon the stand and swore he further saw at some other time the word "lighterage" in a little pamphlet. But, Senators, he said before Wrisley Brown and before the Judiciary Committee that when this Lighterage case was first discussed he saw the cases in a little book, a brief he said. There is no court docket mentioned then. He said, "I saw the brief filed by the lawyers. I took it in my hand." Here are the briefs I hold in my hand. He called them little books. The judge admitted yesterday that at that time he had taken home with him the documents, the records, the briefs in the case.

One of these little books is what old man Williams picked up. It is entitled, "Case No. 38," where the Delaware, Lackawanna & Western and the Lehigh Valley Railroad appeared as defendants. That is what old man Williams swore before Wrisley Brown when the facts were fresh in his mind, and practically what he swore before the Judiciary Committee, and he does not particularly deny it here, except that they bring out the fact that later on, in September, after the option had been secured, after the judge had gone to New York, Williams saw or could have seen in the little trial docket the word "lighterage." I believe Williams saw that, Senators. He was in the judge's office four or five times a week, so he said, for the last three or four years, not only a daily visitor, but often a double daily visitor. He seems to have had privileges there that permitted him to go through the judge's documents and books and look up what railroad cases the judge had pending before his court, and I expect in turning the leaflets of this little trial docket he may have seen the word "lighterage" there.

But, Senators, listen. They do not say that old man Williams has told a falsehood here, because he is the judge's friend and has been the judge's go-between and handmaid for four long years. Williams said that he talked about the Lighterage case before the judge went to New York. He said that positively in several different places. "How long was it after you talked about the Lighterage case that the judge went to New York?" "I do not know. It may have been two weeks, a month."

You can not resist the conclusion, Senators, that Judge Archbald did say to old man Williams, "I will go to New York and see Brownell." Why? Because he did go. One reason, the judge assigns in his answer for going was that he had understood the title of Robertson & Law was in dispute and had been referred to Brownell. When Brownell comes on the witness stand he never mentioned Robertson & Law's interest in it, because at that time Judge Archbald knew Robertson & Law had already given Williams an option on their interest in this bank, and there was no trouble about it.

He says in his answer that that is what he went to see Brownell for. Further on he says he was introduced to Richardson and only called on Richardson for the purpose of "hurrying up the proposition." He never did discuss Robertson & Law with either Brownell or Richardson.

No, Mr. President, the conclusion here is irresistible. This judge, knowing his power, went to New York to see the head officials, Brownell first and then Richardson, for the purpose of compelling them to agree to his proposition to purchase the dump. Why do I say that? Because along in June or July Richardson and May had agreed they would not sell it. Then the judge gets restive and he writes a letter to Brownell. He does not put Brownell's name in the letter either, and if one did not have the envelope you would never know to whom the letter was written.

"MY DEAR SIR: I want to know if you will be in your office the 4th of August. I want to see you on a little business"—Something of that sort. Brownell immediately writes back, "Come." Brownell said, "I have nothing to do with Richardson's business; I will introduce you to Vice President Richardson." On the 25th of August May went to New York to see Richardson, and, among other things, he discussed the Katydid proposition with Richardson, which proposition they had turned down two months before. "Richardson and I talked the matter over, and I went back to Scranton on the 26th of August, and on the 29th of August I saw the judge."

The judge makes the impression that May knew he was financially interested in this proposition. I tell you, Senators, this evidence will convince you that the judge knew he was doing wrong, and he kept his name out of all this transaction until after he had secured the option from the litigants in his court. May, a man who had been walking in front of the judge's door for many months and years called on the judge and said, "Judge, send Mr. Williams around; I will give him that option." Why did he not say to the judge, "Judge, we have agreed to give you and Mr. Williams the option. I will make it out to you"? No, sir; the judge calls in Williams and says, "Go up to May. Now we can get it. I have been to New York and I have seen Richardson and Brownell." Williams says the judge told him to go, and "May likes you very much; go up and you can get it." He then goes and does get the option; and he gets it in whose name? He gets it in E. J. Williams's name. The judge is still concealed, although he says he expects to make two or three thousand dollars out of the option. On the 4th of September, when they secured the option from Robertson & Law, which had theretofore been verbal, the judge draws it to Williams anew, and he does not put his own name in it. There they have given an option to Williams, a handmaid, a go-between, a dummy, in which the judge expects to reap a financial profit of two or three thousand dollars, or it may be more.

Now, mark you, he writes to this very same man, May, on the 29th of November, though he has stated that he thinks May knew that he was financially interested in it; but listen to that letter of the 29th day of November. I think I will take the time of the Senate to read just a little of it to show you that he was even concealing from Capt. May the fact that he was financially interested in this transaction. After the option had been granted by May to Williams on November 29, two months later, he writes to Capt. May:

"MY DEAR CAPT. MAY: I have closed a deal on behalf of Mr. Williams for the Katydid culm dump—

Why did he not say to May, "We have closed a sale"? He kept the fact concealed from poor old May that he was financially interested in it, and made May come up and deliver to this man, Williams, through his influence with the New York office with Richardson. There is no other conclusion that you can reach, Senators, from the testimony in the case. The judge practically compelled Richardson to order May to reverse his position and give the judge the option he coveted.

The Marian Coal Co. proposition, Senators, is along the same line. Who first suggested Watson's name? This same old fellow, Williams. He goes to one of the Bolands and says, "You employ George M. Watson; he can settle your case." Boland gets Watson, and where does Watson go? He goes to Judge Archbald, of the United States Commerce Court, when he knew that that judge had at that time the Delaware, Lackawanna & Western Railroad Co. in his power in three ways; because the Marian Coal Co.'s case was pending in the Interstate Commerce Commission, which was liable to be appealed to Judge Archbald's court; the Delaware, Lackawanna & Western Railroad Co. was a party defendant in the lighterage case; and the Delaware, Lackawanna & Western was interested in the Meeker case, which lowered the rates upon coal by the Interstate Commerce Commission, and that case, too, was then pending in the Commerce Court. There were three ways in which this company—the Delaware, Lackawanna & Western—were interested, and the judge knew it.

Then he sets about with this man Watson, who says—even Watson, a man of his type, in his testimony says—that he got very mad when anyone suggested that he would associate with a man like E. J. Williams. He says that in his testimony. Then Watson goes to the judge, who has these railroads in his power. Senators, did you ever hear of a man in your life, in high or low official position, doing what this judge has done and in the persistent manner in which he did it for mere personal friendly motives? I do not care what his intent was; the conduct itself is bad. The first thing he did was to call up Loomis, the vice president of the Delaware, Lackawanna & Western, on the telephone. He could not get Loomis. Then Loomis swears that he saw the judge on the street in Scranton, and the judge told him that the Marian Coal Co. case would be a good case to settle with the Bolands—"intimated," I believe the word is—that it would be a good thing to settle it; and to

see whom? To see Watson. Then on the 4th day of August, the very day he went in to see Brownell about the Katydid dump deal with the Erie Railroad Co., he goes over to see Mr. Loomis, the vice president of the Dalaware, Lackawanna & Western Railroad Co., in behalf of Watson, who was employed to settle the Marian case with the Delaware, Lackawanna & Western Railroad.

Then, Mr. President, Mr. Loomis swore that at some time between the 1st of September and the 5th day of October the judge called on him again in New York to ask how they were getting along with the settlement. Then, on September 27, the judge, after these persistent interviews and discussions, gets a letter from Mr. Loomis saying that he does not think there is any possibility of a settlement. Ordinarily, if he had stopped there, it would not have looked so bad, but he sits down and writes: "I am very much disappointed that you can not settle this case, and I shall still hope that there is some way of settling it." He writes that to Loomis. That was on the 27th day of September. On the 30th day of September he calls up Mr. Phillips, the superintendent of the coal company owned by the railway, and says, "I want to see you." Phillips says, "All right, I will see you in the morning." The morning came and Phillips forgot it. Then at lunch the judge called him up again and said, "You forgot that appointment with me to-day, and I want to see you." "All right, Judge, I will call upon you this afternoon." "No," the judge replied, "I am going to take a walk; come to-night"; and for the first time in the life of Reese A. Phillips he called at Judge Archbald's home to discuss the settlement of this $161,000 claim against the Delaware, Lackawanna & Western Railroad Co., and went over the whole matter with him. Phillips tells him there is no chance of a settlement; that all that they think is due would be $3,000 in excess coal rates on account of the Meaker case, and $11,000 for the value of the washery, making it $14,000, I believe. The judge said to Phillips, "It seems you are a long way apart." And, mark you, then Watson, on the 2d of October, either by letter or by personal conversation, states to Judge Archbald, "I have written to Truesdale and to Loomis asking for a conference as quick as possible in this case"—a personal conference. Then the judge follows that up with a letter to Loomis of October 3, in which he says, "There is nothing like a personal conference in these matters." In a letter to Loomis before that he says, "I would volunteer my personal services if I thought it were possible to accomplish a settlement of this case"—between litigants then in his court. Then, when the conference was held on the 5th of October, "There is no chance of getting together. It is ridiculous," the railroad officials say, "to ask us $161,000 for this proposition." Mr. Boland says that the judge knew that a hundred thousand dollars was to be the maximum. "It is ridiculous; we will not discuss it at all." But old man Watson says, "Why, remember the Meeker case; it is pending in the Commerce Court now"; and the suggestion was that Judge Archbald was to pass upon the Meeker case. "If he sustains the Interstate Commerce Commission the Meeker case will cut the freight rates on coal on your road—the Delaware, Lackawanna & Western—as well as the others, and you had better look out. Not only that, but you are now parties in his court in the Lighterage case; and not only that, but this case we are trying to settle may go to his court by appeal from the Interstate Commerce Commission." That is the conclusion.

Senators, there never was a more powerful chain of circumstances where judicial influence was brought to bear upon a set of railroad officials in this country than that which is shown in this Delaware, Lackawanna & Western case. I can not understand for the life of me how frail mortal men, like Loomis and Truesdale, failed to "stand and deliver."

After they broke up that conference on the 5th of October with no settlement, what happened? Old man Watson goes to his guide, "I must go to the man who is engineering this deal." The next day he wired down to Washington to the judge, "What time can I see you to-morrow in Washington?" The judge promptly wires back to him, "Almost any time." Then Watson wires back, "Will be at the Raleigh Hotel to-morrow afternoon at 1.30; leave instructions." The judge knew that the conference was going on.

Old man Watson, you will find if you will read the testimony, swore at least five different times that he did not come to Washington after that conference; that he came here before the conference to get the brief in the Meeker case, which was produced at the hearing before the Judiciary Committee. The brief that he claimed he had gotten on the 7th of October was not filed until the 9th day of October in the Commerce Court, and the judge must have sent it to him, I imagine from his testimony the other day, after the brief had been filed. The fact is, that after this conference broke up he wanted the judge to use still more pressure and more power to bring a settlement about. This man Watson saw from $5,000 to $61,000, whichever way you may look at it, slipping away from his greedy hands. He says in his testimony that his train was, I believe, an hour late, and when he got to Washington, although it was raining, the weather was bad, and he was to have been here at 1.30, he found the judge patiently waiting for him at the Raleigh Hotel.

That was not the end of it. The judge goes further. After that conference, which he brought about—and these railroad officials say they had it on account of this judge—that was not all. The judge still pursued it. He saw Loomis again in an effort to get him to make some final settlement or offer; and on the 13th of November he writes, "My Dear Christy, I have seen our friend"—I guess he referred to Mr. Loomis—"and there is no chance for a settlement of the case."

Senators, I wish I had the time to discuss all the other remaining articles. I think the Rissinger matter, the signing of the $2,500 note, the acquisition of stock in the Honduras gold-mining scheme, is one of the ugliest charges in this entire body of articles. The judge admits in his answer that during the time the old Plymouth case was pending in which Rissinger was interested negotiations were going on between him and Rissinger about sales of the Honduras stock, but he says in his answer a little later that he understood that his indorsement was simply as an accommodation. How would you, Senators, like to be innocently and openly prosecuting a suit in a United States court when you knew that your adversary was in the private chambers of the judge making with him deals for stock, wherein he used nothing to purchase it but his name as a judge, which is worth nothing in commercial channels because they never got the money until they had to take a judgment note against Mrs. Hutchinson and Rissinger before they got it. What Rissinger was after was the influence of this judge in those cases which were pending. He formed his little corporation on November 10 and during the time when the case was pending involving $25,000 Rissinger was in the private chambers of this judge discussing with him the details of a scheme down in some foreign country absolutely unknown to the defendant in the case. After the case was decided in Rissinger's favor, then he does sign up the note, then the $2,500 is secured, and the judge is passed over $1,680 worth of stock, for which he never paid a cent, never has paid a cent, and it was never intended that he should pay a cent. It was a pure gift in order to influence this judge in those cases, or at least to get in his good graces.

In regard to Packer No. 3, Senators, if the judge had secured it from the Lehigh Valley Railroad Co.—I have made some figures which, with the permission of the Senate, I will insert in connection with that proposition—he would have made $125,000 a year. There were 521,000 tons of coal, of which they would have washed and prepared 500 tons a day—a whole trainload per day.

The judge expected to transport that coal to market, and under the ordinary price of coal he would have made something between $250,000 and $300,000 on that 521,000 tons of coal.

Improvements, $20,000.

Percentage of coal—			Tons.
Chestnut,	6 per cent,	or	30
Pea,	6 per cent,	or	30
Buckwheat,	20 per cent,	or	100
Rice,	30 per cent,	or	150
Barley,	38 per cent,	or	190
	100		500

Number of men necessary to operate plant, 24. Average wages, $2.50 per day. For 26 working days the amount would be $1,560.

Prices obtained for coal at plant are as follows:

Chestnut,	30 tons, at $3 per ton		$90.00
Pea,	30 tons, at $1.85 per ton		55.50
Buckwheat,	100 tons, at $1.50 per ton		150.00
Rice,	150 tons, at $1.10 per ton		165.00
Barley,	190 tons, at 60 cents per ton		114.00
	500		574.50

Total receipts for coal for 26 working days would be $14,937.

Royalty per day on an output of 500 tons:

Chestnut,	30 tons, at 45 cents per ton		$13.50
Pea,	30 tons, at 30 cents per ton		9.00
Buckwheat,	100 tons, at 20 cents per ton		20.00
Rice,	150 tons, at 15 cents per ton		22.50
Barley,	190 tons, at 8 cents per ton		15.20
	500		80.20

Total royalty for month of 26 working days, $2,085.20.

Fixed charges per day—allowances for wages, royalty, supplies, depreciation, etc.:

Wages,	13 cents per ton on 500 tons	$65.00
Royalty,	16 cents per ton on 500 tons	80.00
Supplies,	4 cents per ton on 500 tons	20.00
Depreciation,	4 cents per ton on 500 tons	20.00
	37	185.00

Total fixed charges for 26 working days, $4,810.

Receipts for coal		$14,937.00
Less—		
Wages	$1,560.00	
Royalty	2,085.20	
Fixed charges	4,810.00	
		8,455.20
Profit for month		6,481.80

Enough evidence has been adduced here to prove that the railroad companies hold to coal properties like grim death; they do not turn them loose until they are compelled to do so, either under the law or under the influence of some judge of a high court, as in this case.

It looks to me, Senators, from all the pipes the judge was running out, from all the wires he was setting, from all the financial deals out of which he was preparing to make money here, yonder, and everywhere, that the judge thought the Commerce Court was going to be abolished and he was going to get into a business where he could make money rapidly, because he spent practically the whole of 1911 in preparing these coal-dump deals and making propositions to the railroads about securing their coal properties and settling lawsuits with them.

Mr. President, several times in the history of our country judges have been called before this great bar to account for their conduct, and in every case of conviction the charges were far less grave than those made and proved in the case before us to-day. One of the early impeachments was that of Judge Addison, who was impeached and convicted in Pennsylvania in 1802 on two charges, to wit:

"First. Directing the jury that the address of an associate judge to them had nothing to do with the question before them.

"Second. Preventing the associate judge from addressing the grand jury concerning their duties, and by denying the right and by leaving the bench, and thus irregularly adjourning court."

Judge Pickering was impeached and convicted by the United States Senate in 1804 for ordering a ship to be restored to a claimant without producing a certificate for the payment of duty, for refusing to hear testimony of witnesses produced to sustain the claim, and refusing an appeal from the decree which he had rendered.

Judge Humphreys was a United States district judge in 1862, and was convicted by the United States Senate on the following charge:

"For neglecting and refusing to hold the district court of the United States."

It is claimed, Mr. President, that this judge did not possess the evil motive in all of these transactions which ordinary men must necessarily attribute to him after knowing the admitted facts. This plea can not excuse a person occupying his high position. He ought not to have committed acts which in the minds of ordinary men would scandalize his office and bring his official character into disrepute. Upon the admitted facts in the respondent's answer I believe he should be found guilty and removed from office. There is a maxim of law expressed in Latin, res ipsa loquitur; that is, the thing itself speaks. True, that doctrine is usually applied in damage suits when, certain facts being proved or admitted, negligence is presumed, and so in this case all the ugly facts being admitted by respondent in his answer they, per se, constitute the opposite of good behavior, regardless of motive, and render him liable to forfeiture of his office. We are told in Holy Writ that—

"Uzzah put forth his hand to the ark of God and took hold of it for the oxen shook it. And the anger of the Lord was kindled against Uzzah; and God smote him there for his error, and there he died by the ark of God."

In that case Uzzah's intentions were not only not bad, but were positively good. What he did was innocently done, but his acts were a sin in the sight of Jehovah. But no such innocent motive moved Judge Archbald in all of his devious transactions. He knew the power of his high office, and he knew his own power because he held that office; he was conscious of it at every step; he kept his high position posted before the eyes of the litigants in his court by constant correspondence upon stationery on which were the awe-inspiring words "R. W. Archbald, judge, United States Commerce Court, Washington." Every railroad president, every railroad counsel, and every railroad superintendent instinctively realized, upon receipt of such correspondence, the power and position of the respondent, and peculiarly so in this case, for these railroads were at that very time to a certain extent within the power of this judge because they were parties to suits then pending in his court, and he knew it.

Judge Grover, a splendid man and great judge, of high character, who sat upon the impeachment case of George G. Barnard, in voting upon the question of disqualifying Judge Barnard from holding office, said:

"Upon the trial of important civil causes he has fairly and uprightly discharged the duty of a just judge according to the best of his ability. The errors into which he has fallen are somewhat akin to some of the nobler virtues. I think that the votes upon these articles show that the errors into which he has fallen have originated from attachment to friends, from the idea that upon the bench he had the right to remember who were his friends and who were his enemies. I hope that the result of this trial will not only solemnize every judge in this State, every man clothed with a public trust under the Government, that all will have impressed upon their minds when they assume any function in behalf of the public that all selfish considerations are to be discarded, all their ends the public good. The respondent's desire to aid friends has led to grave errors—errors, in my judgment, inexcusable. The evidence has satisfied me that Judge Barnard, although possessed of those genial qualities that have surrounded him with strongly attached friends, was destitute of some qualities essential to the judicial character. It is possible, if he had committed these offenses in a legislative or administrative capacity, I might be satisfied by removal only; but in that position where the greatest integrity is to be exercised, where none should turn either to the right or to the left in the discharge of duty, from any consideration whatever, where the only inquiry should be, What is the law, what is right, and act accordingly. In this case, with the kindest feelings toward Judge Barnard, I am compelled to vote in the affirmative."

In that case, Senators, Judge Barnard was impeached upon the sole charge of partiality. How much more grievous are the charges which we have proven against the respondent in this trial!

I yield to no one in my reverence and respect for the splendid judges who have illumined and adorned the annals of our judicial history. When the roll of the names of Marshall, Taney, Miller, Brewer, Harlan, and Fuller is called, my pulse quickens and my blood warms because I am one of their countrymen and "have a share in the heritage of their fame," but what a far cry it is from one of these great men to the respondent at the bar! Can you imagine that any one of these, during the wildest and most indiscreet moment of their lives, would ever have descended from their high position to the low plane of dickering and trafficking for private gain with parties who had suits pending in their courts?

Mr. President, the history of the American judiciary is a glorious record, which makes every citizen of this country proud. "It is a heritage priceless in value and belonging to us all. Lapse of years but adds to our reverence for Marshall and Story, Kent and Miller, Taney and Field. Amidst the conflicts of parties and principles, which raged so furiously around them, they were calm and just in wisdom and conservatism, declaring the law as they believed it to be, with an independence which knew no fear. Around some of them clouds and darkness gathered, but they soon passed away."

> "As some tall cliff that lifts its awful form
> Swells from the vale and midway leaves the storm,
> Though round its head the rolling cloud is spread,
> Eternal sunshine settles on its head."

So long as judicial independence shall be admired, so long as judicial purity shall be respected, so long as judicial propriety shall be demanded, so long as justice shall be the genius of our civilization, just so long will the names of our great jurists remain embalmed in sacred memory and continue the pride of bench and bar and the glory of American institutions.

In all ages and in all climes where civilized man has dwelt he has been ever watchful in endeavoring to choose judges among the most upright, honest, and just of men—men of poise, incorruptibility, and discretion, who well understand and appreciate the dignity and proprieties of their office.

It should be burned into the minds and hearts and souls of the judges throughout the United States that they should avoid everything that brings disgrace, scandal, and disrepute upon their high office, so that whatever other branches of our Government may at times lose the confidence of any portion of our

population, the judiciary may ever stand as an immaculate bulwark against the enemies of a republican form of government. Whenever a judge violates this motto, that very moment the magic of his judicial power is gone, and "it loses for itself those princely attributes with which it is by the Constitution invested."

The moment a high judge dares to use his office directly or remotely for private gain "that moment he loses the respect of the community." Let the standard of judicial ethics in this great country be so high that every judge may deserve Webster's encomium on Chief Justice Jay, when he said:

"When the judicial ermine fell upon his shoulders it touched a being as spotless as itself."

That was no absurd fiction of the noble Romans who instituted the vestal virgins to keep burning forever the fires of Roman liberty. Her liberty never expired until that noble sisterhood was dragged down and corrupted; and so, too, the fires of our liberty will never be extinguished so long as our judges remain incorruptible and possess with undying tenacity judicial rectitude and propriety, according to the eternal fitness of things, and in keeping with that which is best and noblest among the established principles of mankind.

Mr. President, to paraphrase somewhat the language of Judge Spencer, of New York, one of the managers in the impeachment of Judge Peck: I desire to say that the House of Representatives and the Judiciary Committee of that body, after long, patient, and full examination of all the evidence in the case, came to the unanimous resolution that Judge Archbald should be impeached, and by a vote of 223 to 1 sent us to your bar to demand that he be convicted; and happily, Senators, indeed, the record will show you an absolute absence of all party feeling. Could I feel in the remotest degree that the baleful influence of partisanship had mingled with the action of the committee or the House of Representatives, I declare unto you that no earthly consideration could have prevailed upon me to appear here as one of the prosecutors in this trial. I have no language to express the abhorrence of my soul at the indulgence of such unhallowed feelings on such solemn occasions. I believe in the long annals of impeachment trials in this great body that the charges against the respondent here are freer from the slightest tinge of partisanship than any case ever presented to this high court, and in this fact you, Senators, the House of Representatives, and the people of the United States are to be congratulated.

You are to say, Senators, by your verdict whether you will send this man, Judge Robert W. Archbald, back to his high seat on the bench of the United States Commerce Court and whether you approve or disapprove his conduct in all the transactions alleged in the various articles in this case. If you acquit him, your verdict will be construed as an indorsement of his conduct, and the people will be powerless; but, sirs, how can you render such a verdict in the face of even the admitted facts in the case? Surely the time has not arrived in the history of this great Government when judges of high courts shall be licensed to traffic with litigants in their courts, to make with such litigants advantageous private bargains, and to increase their personal fortunes by such nefarious practices. Senators, if that shall be the result of your verdict—and you must admit that such a conclusion may be justly drawn from a verdict of acquittal—then I declare unto you that I shudder when I contemplate the future of my country. Such practices on the part of judges will open wide the door to judicial reprisals, blackmail, and plunder, and very soon, as in the days of Rome, when justice was bought and sold with shameful boldness, this splendid Government, constructed and cemented by the blood and sacrifices of our forefathers, will totter and stagger to its fall.

And now, Senators, my task, though imperfectly performed, is at an end; the greater duty devolves upon you, and I believe that your verdict will mark an epoch in our history and will have a tremendous influence upon the perpetuity and stability of our liberties and our institutions, and even upon the life of the Republic itself. The people of the United States are now demanding, possibly as never before, the strictest rectitude on the part of their judges. Can you imagine that any district or State would elect this respondent to the high position which he now holds with all this testimony against him fresh in their minds? I ask you, Senators, who are the appointive power of Federal judges, would you confirm this judge in the first instance were he nominated and his name sent to you for confirmation if all this evidence stood out against him, or evidence parallel or akin thereto? I do not believe that a man with such a record could receive one vote in favor of his confirmation from this great Senate.

Whatever reputation the respondent may once have had for impartiality or judicial rectitude is now gone. His usefulness as a judge is at an end. He has prostituted the office which you gave him in his worship of mammon; he has sacrificed his judicial integrity and official rectitude on the altar of greed. He has sorely violated the common rules of judicial ethics and propriety. Hence we, the representatives of the people, speaking for them and in their name, demand that R. W. Archbald shall be removed from office under the Government of the United States.

Mr. Manager CLAYTON. Mr. President, of the remainder of the time Mr. Manager FLOYD will occupy 1 hour and 9 minutes; Mr. Manager HOWLAND will occupy 45 minutes, and the balance of the time, to wit, 2 hours and 30 minutes, will be reserved for the closing argument on the part of the managers.

ARGUMENT OF MR. FLOYD, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager FLOYD. Mr. President, it is never a pleasant task for me to appear in the rôle of a prosecutor against anyone. It is a peculiarly unpleasant task to appear against one holding high position like the respondent in this case, but I come here not at my own instance; I come here as one of the managers under a command from the House of Representatives, and the House of Representatives is acting not alone for itself, but in behalf of all the people of the United States. We are here to discharge a public duty, and whatever might be our sympathies for the respondent, they should not swerve us in the discharge of a solemn duty.

The question at issue before the Senate is, Has the respondent, under the Constitution, committed high crimes and misdemeanors for which he should be removed from office? The managers who have preceded me have referred to many of the charges in the articles of impeachment, but there are one or two which they have omitted to mention to which I wish to call attention in the course of my remarks; but first I desire to discuss a little more in detail article No. 2, which I regard as one of the most important and one of the gravest charges in all the articles of impeachment brought against the respondent in this case.

In order that you may better understand the particular point I have in mind, I want to call attention to a phase of the pleadings pertaining to article No. 2 and article No. 13 that is not found in regard to any of the others. Under the pleadings in this case it is remarkable that practically all of the allegations of fact contained in the 13 specifications and articles of impeachment are admitted save and except as to article No. 2 and to that part of article No. 13 which relates to the same charge that is contained in article No. 2.

It is admitted in the answer that Judge Archbald was judge of the Commerce Court; it is admitted that these railroad companies with which he was dealing were at the time parties litigant in suits Nos. 38 and 39, that were pending in the Commerce Court. His interest is admitted in the Katydid transaction, and he was to share in the profits; it is admitted under article No. 10, which has not been alluded to, I believe, by any of the managers preceding me, that in 1910 he made a trip to Europe at the expense of Henry W. Cannon, a rich relative of his wife; it is admitted that on the same occasion a number of lawyers who practiced in the judge's court made up a purse of $525 in money and delivered it to him in person on board of the ship on the day he was ready to sail; it is admitted in the transaction concerning Packer No. 3 that he was to become a member of that company; it is admitted that in the Warnke deal he received a note of $500 and shared it with John Henry Jones. But when it comes to No. 2 the fact of his interest is denied. Now, why?

I want to call attention in this connection to the judge's own testimony when questioned on cross-examination concerning his interest in the Jones Coal Co., a corporation which it was proposed to organize to operate Packer No. 3, sought to be acquired from the Girard estate and the Lehigh Valley Coal Co.

On page 1249 of the record in this case in speaking of the Jones Coal Co. that was to be organized, for which Mr. Farrell, of New York, was to put up all the money and of which Judge Archbald was to become a member, Judge Archbald gave this testimony:

Q. You were to get a fourth of the balance?—A. About a fourth of the balance; yes.

Q. Why were you to have any interest in that stock?

And the answer of Judge Archbald is—

Why not?

Q. Well, why not, after you had gone to see Mr. Warriner; is that your idea?—A. I see no reason why, after organizing that company, that enterprise, I was not entitled to a share. It would be very strange if I did not have a share.

Q. Why?—A. Because I was instrumental, in part, in organizing the company, getting it up. It was in part my scheme and part Mr. Jones's.

These several transactions in which the judge participated—I mean these culm-dump transactions and these attempted sales are all similar in character.

In article No. 2 it is charged that the Delaware, Lackawanna & Western Railroad Co. was a party to cases, dockets Nos. 38 and 39, in the Commerce Court, and that is established and admitted; but the Lehigh Valley Railroad Co. was a party to the same suits, and Judge Archbald did not hesitate to go to Mr. Warriner, the vice president of the Lehigh Valley Coal Co., and secure a contract and agreement with a view of securing a lease from the Girard estate and operating that culm dump by the Jones Coal Co., the one to which I have just referred. Mr. Warriner was also the vice president of the Lehigh Valley Railroad.

The Lehigh Valley Railroad was a party to those suits pending in the Commerce Court. Then, the fact that the Delaware, Lackawanna & Western Railroad Co. was a party to these same suits does not explain why Judge Archbald washed his hands of this transaction when he admits his interest in the other. The Erie Railroad Co. was a party to the same suits, dockets No. 38 and No. 39. Judge Archbald did not scruple to see Mr. Brownell and Mr. Richardson and Mr. May and secure a contract from them, in which he admits that he was to share in the profits.

Then, in the judge's own language, when it comes to the Watson transaction, when we come to consider the facts charged in article No. 2, wherein the question is raised as to whether or not Judge Archbald was to share in the profits of that transaction, let me repeat his answer to the other question, "Why not?" How do you differentiate that case from the others? Now, was he to share in the profits? I am frank to admit that we have been unable to show by any direct and affirmative testimony that fact; but we have circumstances in this case which tend to establish that fact. Judge Archbald was participating in these transactions, was engaging in them for the purpose of making profits for himself. You can not differentiate between these several deals and transactions in such way as to make it improper for him to receive a consideration or be interested in this Watson deal any more than in the others. They were all of a kind. What was the proposition? The proposition was to sell two-thirds of the stock of the Marian Coal Co. to the Delaware, Lackawanna & Western Railroad Co. for $100,000, and the Bolands, stockholders in the Marian Coal Co., agreed to pay George M. Watson a specific fee of $5,000 if he could make that trade. Now, if Judge Archbald will accept $500 for the services that he rendered in the Warnke transaction, the case of the Premier Coal Co., why would he not accept one-half of the $5,000 in the Marian Coal Co. case?

The circumstances concerning that transaction are peculiar. The Marian Coal Co. was represented before the Interstate Commerce Commission by an attorney, Mr. H. C. Reynolds, who appeared and testified in this case. From every appearance he is an able lawyer. Mr. Watson was hired for a specific service, and that was to bring about this settlement. And Mr. Williams, according to Mr. Boland, is the man who first suggested to Mr. Boland that if he would see George Watson that Mr. Watson was in position to settle this controversy with the railroad company.

Let us see who brought it to the attention of the railroad company. Take the testimony of Mr. E. E. Loomis, vice president and general manager of the Delaware, Lackawanna & Western Railroad Co. He testified that the first he ever heard of Watson in this transaction or of Watson's ability to bring about a settlement was when Judge Archbald met him on the streets of Scranton and suggested to him that he thought the differences between the Marian Coal Co. and the railroad company ought to be settled outside of court. Mr. Loomis says he said to him, "Judge, it is the policy of our company to settle all matters outside of court whenever we can do so on a fair basis." Mr. Loomis says that Judge Archbald replied, "If you will see George Watson, an attorney of Scranton, I think he is in position to settle this controversy on a fair basis." And according to Mr. Loomis's testimony he took the matter up with his officers. had them investigate the property and make report to him, and about the 27 or 28th of September notified Judge Archbald of the result. The railroad officials turned down the proposition. Then an appeal was made by Watson on the 2d of October, and by Judge Archbald on the 3d of October, to Mr. Loomis for a further hearing with Mr. Loomis and Mr. Truesdale, Mr. Truesdale being the president of the company. That hearing was arranged, and on the 5th of October they held a meeting in Scranton for the express purpose of hearing Mr. Watson and hearing his proposition, and determining whether or not they could settle on the basis proposed by him. Now, what was his proposition? His proposition was $161,000. It was disagreed to.

But what was the contract with Watson? According to the testimony of Mr. C. G. Boland and of Mr. W. P. Boland the contract was that if he could secure a settlement for $100,000 they would sell their entire interest in the Marian Coal Co. to the Delaware, Lackawanna & Western Railroad Co., and that would settle the whole controversy, because when the Delaware, Lackawanna & Western Railroad Co. had acquired control of that corporation the suit the Marian Coal Co. had against that railroad before the Interstate Commerce Commission would be not under the control of the Bolands, but the railroad would own the property and the lawsuit. Having control of the lawsuit by having acquired ownership of the corporation, they could end the controversy by dismissing the suit.

Now, Mr. Watson, whose testimony was taken before the Judiciary Committee and which was introduced in evidence by counsel for respondent, admits in his testimony before the Judiciary Committee that the original proposition was $100,000 and that he was to receive a fee of $5,000 in the event he secured the settlement. But that proposition was never made to the railroad people. Why the raise? The only testimony that we have upon that point is the statement made by Watson to W. P. and C. G. Boland, when they asked him why it was that he was raising the consideration from $100,000 to $161,000. He made the statement that Judge Archbald was to be a powerful factor in the settlement of that case, and that it was his purpose or his intention, if he secured the settlement, to share one-fourth of all in excess of the $95,000 with Judge Archbald.

Did the judge intend to take it? He was asked on the stand the other day whether he had a specific agreement with Mr. Williams about that Katydid proposition, and Mr. Williams was asked particularly about that. Neither would say that previously there had been made any specific agreement. Judge Archbald, when asked about it on the stand, said that he assumed he was to share in the profits—assumed it. We may well assume that he was to share in the profits of the Watson deal. Now, if he would share in the profits in that transaction, why would he refuse to share in the profits of the larger transaction if it had been consummated? Why does he deny that charge, that particular point in that charge? Because it is material; because the demand that was made by Mr. Watson in excess of the amount that the Bolands had agreed to take—$61,000—was so unconscionable, both in morals and in trade, that he dared not admit his interest in that transaction.

So I am disposed to stand here and insist that the circumstances in this case tend to the conclusion that had that transaction been consummated, Judge Archbald would have been as ready to accept money from Watson as he had been from Warnke or the Premier Coal Co.

Let me call your attention to the peculiar way in which the judge got his money from the Premier Coal Co. Now, as has already been alluded to by Mr. Manager WEBB, it seems that the judge had a good many partners or associates in these deals. There was Edward J. Williams. He was mixed up in the Katydid. He was the first man who suggested Watson to the Bolands. There was John Henry Jones. John Henry Jones, it seems, was concerned in some way in this Warnke deal or Warnke transaction. John Henry Jones testifies that after the contract had been closed and the sale had been made to the Premier Coal Co. he went to Mr. Warnke and demanded his commission of $500. John Henry Jones's theory was that he was entitled to it; that he had had something to do with the bringing together of the parties. Warnke refused to pay John Henry Jones. Then Judge Archbald goes in person to the officers of the Premier Coal Co. and demands a commission of $500, and they execute a note for $510, the $10 being added for the discount, and the judge accepts it, and then divides the $500, according to his testimony, with John Henry Jones. What was the consideration?

He had no option on the property at that time, according to John W. Berry. He had previously had an option. But for some unexplained, undefined service on the part of the judge in regard to that transaction, he demands and receives a note, a bankable note, for $510, which he discounts at the bank for $500 in cash.

If he will receive money under such circumstances and for such considerations, under all the circumstances in this case, what reason is there for us to conclude that he was acting purely for friendship in this transaction concerning the Marian Coal Co.? He was charging for services rendered in connection with other deals and transactions, and the evidence discloses that fact. He rendered far more service, so far as actual work was concerned, in his efforts to bring about a settlement of the Marian Coal Co. disputes with the Delaware, Lackawanna & Western than he did in other transactions in which he participated.

What did he do to secure his interest in the Katydid? He wrote to Capt. May a letter on the 31st of March; went to see Mr. Brownell in New York on the 4th of August; had a short conference with Mr. Richardson on the same day that he saw Mr. Brownell; returned to Scranton, met Capt. May on the street, and May told him that they were ready to make that deal and to send Williams around. Williams went around and got the contract. That is the service that the judge rendered in regard to the Katydid proposition, for which he proposed to share equally in the contract.

But what did he do to bring about a negotiation or settlement in which he and Watson were interested? Some facts are developed by the respondent himself that are not disclosed by Mr. Loomis. It appears from the respondent's own testimony that he first endeavored to get the Lackawanna Railroad people interested in this transaction on the 4th of August when he was in New York to hold court and to see Brownell. He also went, at Watson's instance, on the same date, to see Mr. Loomis. But in some way that circumstance does not seem to have impressed Loomis, and the first conversation that Loomis detailed was the conversation on the streets of Scranton when the judge again brought up the subject.

Then Mr. Loomis testifies that later, between the 1st of September and the 5th of October, when the matter was hanging fire, while he was awaiting the report of his engineers and his agents, Judge Archbald again appeared in his office in New York and inquired about the matter, and Loomis told him in that conversation that he had had his officers and agents looking up the data and as soon as he got the information desired he would make report. And he did.

Mr. Phillips reported to Mr. Loomis on the 27th of September. On the day following Mr. Loomis reported to Judge Archbald by letter that they could not make the settlement. Then Judge Archbald writes a letter regretting the failure to bring about the settlement, in which, to my mind, he makes a very significant statement. He tells Mr. Loomis that "if I thought it would do any good I would volunteer my direct services in the premises."

A conference is held on the 5th of October. Nothing comes of it. Then on the 6th of October, or on the following day, Mr. Watson wires Judge Archbald that he is coming to Washington, and on the way sends him a second wire telling him where he will be. They have a conference in Washington over the same matter. This occurred the day after, or the second day after, the conference was held in Scranton, where these officials of the railroad had rejected the proposition made by Watson, and then, even as late as the 13th of November, we find Judge Archbald writing a letter to C. G. Boland returning certain papers and regretting that nothing had come of their effort to secure a settlement. That is the Watson transaction.

We do not charge in articles No. 2 or No. 13 that the consideration alleged was a valuable consideration, although I notice in his answer to article No. 13 he has injected a denial that it was a valuable consideration. But we believe the circumstances in this case show this transaction was similar to the other transactions, and that the only difference between them was the enormity of the demand, the unreasonable demand that was made. But we insist that it is not necessary, in order to establish the judge's guilt under article No. 2, to show that he was to receive a valuable consideration or a money consideration.

Now, let us see; let us consider it with that view and see whether or not, in order to make Judge Archbald guilty of improper conduct or misconduct under that article, it is necessary for us to show that the consideration was a valuable consideration—and keep in mind that we do not charge that it is a valuable consideration; that is not in the charge or in the allegation.

We say that for a consideration he undertook to assist one George Watson, an attorney of Scranton, to bring about that settlement. Under our view of this case, we think it is wholly immaterial whether he was seeking a consideration for himself or seeking to aid an attorney, a friend of his, in securing a pecuniary or money consideration in the premises.

Mr. Watson was not the attorney of the Marian Coal Co. in the litigation which was then pending before the Interstate Commerce Commission. Mr. Reynolds was the attorney of the Marian Coal Co. in that litigation, and he continued throughout the entire controversy to be their attorney.

Our position is that a judge has no more right to use his official position or to use his influence as a judge to compromise litigation and bring about settlements with a view and for the purpose of securing a pecuniary reward or a fee for some attorney who is his friend than he has to undertake the same work for a consideration for himself. There would be this difference: It might be an extenuation of the offense, but it would not be any justification of the offense.

Now, let us see what happened in this very case and see if anyone can justify Judge Archbald's conduct, entirely regardless of the fact as to whether or not he was to share in the $5,000 fee or was to receive any other money consideration. What was the state of the case? The Marian Coal Co. had filed two petitions before the Interstate Commerce Commission. In one of those suits the petition was filed against the Delaware, Lackawanna & Western Railroad Co. alone, and in the other suit against the Delaware, Lackawanna & Western Railroad Co. and five other railroad companies. One of those suits was in relation to rates and the other for damages for excessive charges alleged to have been collected in the past and for certain other items and damages claimed by the petitioners. Those petitions at the time the judge undertook to bring about this settlement were pending in the Interstate Commerce Commission. He is a judge of the Commerce Court, and that very dispute and controversy that he undertook to settle and compromise may, and most probably will, be taken up before the Commerce Court for determination. If it should go there, let me ask you how can Judge Archbald, who has busied himself, whether for a consideration for himself or for a friend, or without any consideration at all, for a period of time covering from the 4th of August up to the 13th of November, in an effort to bring about a settlement of those disputes and controversies between the coal company and the railroad company, be an impartial arbiter of that controversy when it reaches the Commerce Court? It seems to me that this fact alone should condemn the conduct of the judge as improper, contrary to all ethics, contrary to all right, independently of the question of consideration.

That is the state of the case. There is no escape from it. What will he do after spending months in trying to bring about a settlement, as he says, through his friendship for Watson and through his friendship for Boland, one of the stockholders of the company, when that very controversy comes up for his determination in the court of which he is one of the judges? Is that proper conduct on the part of a judge? He must have been moved by some consideration, some motive; some reason must have prompted him. If he did it to aid Watson in securing that $5,000 fee, then, under the contention of the managers, he prostituted his high office for personal profit and gain for a friend, and he ought to be condemned as a judge for so doing. Can he escape condemnation? What conclusion otherwise can be reached?

We insist that under this article the evidence in this case shows that Judge Archbald was undertaking to accomplish and to bring about a settlement of a matter which he must have known was likely to come before his court. He said in answer to a question propounded to him when he was upon the stand that the reason why he was trying to settle it was to keep it out of the Commerce Court. But he failed to settle it. He had no reason to keep it out of the Commerce Court. Is that proper conduct on the part of a judge?

Oh, it seems to me that a judge ought not to undertake in any such way as the testimony in this case discloses he undertook, to bring about that Watson settlement, to bring about a settlement of any disputes and controversies that may arise in his court.

Keep in mind that the Delaware, Lackawanna & Western Railroad Co. was a party to the suits, docket Nos. 38 and 39, then pending in the Commerce Court.

The judge does not seem to think that that would make any difference. He does not seem to think that anybody would consider that in making a deal with him. It seems to me that the first thought of men who are approached by a United States circuit judge for deals and contracts, whether they were willing to make them or not, would be to seriously consider the proposition through fear that a refusal might incur the judge's displeasure.

A judge as an operator and dealer in culm dumps and coal properties occupies a very commanding position. He might reward his enemies. He might render favors to his friends.

The transactions that have been detailed in this evidence come very closely to that statute of the United States which defines the crime of bribery of judges. We do not specifically charge in any of these articles of impeachment that the judge is guilty of bribery, but on account of the peculiar character of these several transactions I want to read into the record at this point that statute which pertains to the bribery of judges. It is section 132 of the Criminal Code, and it reads as follows:

SEC. 132. Whoever, being a judge of the United States, shall in anywise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judg-

ment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than $20,000 or imprisoned not more than 15 years, or both.

What is the judge in these transactions doing? Procuring contracts. What additional evidence will be necessary to put the judge under the clear purview of that bribery statute in this case, simply to show that he intended to be influenced in some decision thereby, or that he was receiving these gifts, rewards, presents, agreements, or contracts in consideration of some opinion that he had previously rendered?

I desire to call attention in this connection to article 11. I want to mention just very briefly articles 10 and 11. Article No. 10 charges that the respondent made a trip to Europe at the expense of one Henry W. Cannon. Article No. 11 charges that at the time of his departure he accepted as a gift from certain lawyers a purse of money to the amount of $525. I desire to discuss that proposition briefly. I am not going to contend that that is a bribe under the statute I have read you, but I want to call your attention to the circumstances surrounding this transaction, because, while we do not claim that it was an open bribe, we do claim that it was such gross misconduct as no judge of any court ought ever to be guilty of.

He accepted a purse of $525. The circumstances under which that purse was delivered are peculiar and remarkable. It seems that some lawyers, friends of the judge, first got together in Philadelphia and discussed the matter. I believe Mr. Warren, of the firm of Willard, Warren & Knapp, was the first who suggested it. Then they designated Mr. Searle, the clerk of Judge Archbald's court, to the duty of getting the funds together. First, they consulted Mr. Searle, and Mr. Searle said that he did not think the judge, under the circumstances, would refuse it. Then they get the money together and they get Judge Searle, a different Searle from the clerk, a judge of the State court at that time, to go to New York. Mr. Searle, the clerk of the court, who had gotten the money together, accepted a contribution from Judge Searle, which was paid by check, delivers all the money to Judge Searle, and asks him to go to the ship and deliver it in a sealed envelope marked "R. W. Archbald; sailing orders; not to be opened until two days at sea." Judge Searle, the State judge who presented the purse, testifies that he knew that it contained money, but he did not know how much. He did not know whether it contained $500 or $5,000. It is delivered in that way.

Now, here is the document. It is peculiar. I call your attention to the fact that it is typewritten. There is no letterhead on the paper; no place is named.

APRIL 16, 1910.

DEAR JUDGE: This is a greeting of your appreciative friends of the bar of Lackawanna, in the middle district, wishing you bon voyage.

Rather than fruit, books, or flowers, we trust you will be willing to accept this as our hearts' desire for your pleasure and enjoyment in your more than well-earned outing.

May all happiness attend you and yours.

There is no name. Judge Archbald's name does not appear upon it. No money is mentioned. Is not that strange? Not flowers, not fruit, not books. What ought the letter to contain? The judge's name is not mentioned. The money is not mentioned. The place from which it was written is not mentioned. Then there is a list of the lawyers, all signed in typewriting except one, Judge Searle.

I have already stated that we are not insisting that the evidence in support of this article of impeachment sustains the charge of bribery under the law, but we are insisting that it does show gross impropriety and misconduct on the part of Judge Archbald in accepting any such gift.

I do not know who was responsible for the particular arrangement carried out. Of course, the judge was not, because he was in New York preparing for the trip; but I want to say that the man who got that money together and addressed that envelope and fixed up that letter must have been an old hand and an adept at that kind of business. He does not disclose where the letter was written from; he does not disclose on the face of the letter that it contains one cent of money; he does not disclose the name of the person to whom it is to be delivered; and he gets a State judge to deliver the purse to a Federal judge on board a ship ready to sail.

I do not see much opportunity for anybody to get indicted, either under State or Federal jurisdiction, for bribery by reason of that transaction in and about Scranton. Do you? Yet that transaction, like the others, if that money was accepted by Judge Archbald with a view of being influenced in any future opinion thereby, or on account of any previous decision he had rendered favorable to any of those parties in the past, puts the judge within the clear purview of the bribery statute. Can any judge afford to be guilty of conduct where his guilt or innocence of a crime depends altogether upon his mental attitude, when the facts surrounding the transaction would support a grave charge? Can any judge justify such course.

Further, the respondent in his answer says he accepted the money because it would be a reflection upon the donors to return it. What about the $125 that never reached him? Three contributions were made to Mr. Searle, the clerk, after the judge had sailed for Europe. These were not inclosed in that envelope. Mr. Searle, the clerk, wrote to him asking him whether he should send the money or keep it until he came back, and it was by the direction of the judge kept by Searle and delivered to the judge on his return from Europe.

Now, I desire to take up and consider briefly article No. 13. I desire to go a little more into detail as to this article, because the attorneys for the respondent do not seem to have ever caught the force and meaning of it. We allege in article No. 13 a general course of misconduct, a continuing course of misbehavior on the part of the judge. General misconduct is the basis of this charge. We think that if misconduct is cause for impeachment, a general course of misconduct along a particular line would be greater cause for impeachment and that those collective offenses would warrant his impeachment when the particular instances might not do so, in the judgment of the Senate.

What was the general course of Judge Archbald's conduct? He had been a judge for 28 years. If prior to 1908 he had been a just and upright judge, then all the more is the pity for his subsequent conduct. In 1908 we find him in this Rissinger transaction, already detailed by my associate managers. In December, 1909, we find that John Henry Jones executed a note to Judge Archbald. Judge Archbald indorses it, turns it over to Jones, and Jones attempts to get it cashed or discounted at the bank and fails. The note is then taken by Edward J. Williams to G. C. Boland, who was a litigant in the judge's court at the time, being a stockholder in the Marian Coal Co. He refused to cash the note. Then it was taken to W. P. Boland, another member of the firm. Mr. Boland, having a case pending in the judge's court, also refused to discount the note; and finally it is turned back to John Henry Jones, still uncashed and undiscounted. He takes it to one Von Storch, and Mr. Von Storch says he suspected the note; he did not think that a man of John Henry Jones's appearance would be carrying Judge Archbald's note around—of course that is immaterial, for the note was genuine—and in order to relieve his suspicions he called up Judge Archbald, and Judge Archbald told him that the note was all right and that it would be an accommodation to him if Von Storch would cash it. Previous to that time Von Storch was a suitor in the judge's court, in which the complainants against him claimed $10,000, and a judgment for less than $1,000 was rendered against him.

In 1910 we find Judge Archbald going abroad at the expense of a rich relative; we find him accepting this money purse of $650. But it is his conduct since he has become a judge of the Commerce Court that I am going to call your particular attention to under article No. 13. We charge in article No. 13 that, being a judge of the Commerce Court, he undertook to carry on a genefal coal business in dealing in culm dumps and coal properties.

The evidence in this case shows that in March, 1911, he wrote a letter to John W. Peale, who had formerly been a litigant in his court, and a successful one, in an effort to sell to Peale the Oxford washery. Failing in that, another proposition was sent, submitted by John Henry Jones. Peale does not consider it; but Jones refers him to Judge Archbald and asks Peale to call on him in the Federal building at Scranton. Then, on the 31st of March, just two months to a day from the time he had become a judge of the Commerce Court, we find him writing this letter to May asking May to give him an option on the Katydid. On the 4th of August we find him in New York to see Mr. Loomis, starting the Watson negotiations. Along in the early part of August we find him writing to his nephew, the engineer of the Girard estate, trying to secure an option on packers Nos. 3 and 4. Then, early in the spring and continuing through the summer and on into the fall up to the time of the close of the Warnke deal, we find that he is carrying on correspondence concerning the old gravity fill, which was finally sold to Warnke. In three out of these four transactions we find that Judge Archbald was interceding with the officials of the railroad companies in his efforts to bring about these sales and to secure these contracts and concessions, and in two out of the three he succeeded. The Erie yielded and agreed to sell to him and Williams the Katydid culm dump. Warriner, vice president and general manager of the Lehigh Valley Coal Co., made a concession to the judge, and agreed, so far as the railroad company

was concerned, to surrender their rights and to let the Girard estate lease the property to the judge.

Now, is that conduct proper on the part of a judge? Mr. President, open bribery of public officials in this country, in my opinion, is a rare crime. Insidious influence by indirect and improper methods, I fear, is a more common one. Opportunities for making quick and easy money arise which, on the face of things, seem perfectly proper. The deluded official is lulled into a sense of his own innocence by the splendid opportunities his environments afford. Once entering into these negotiations opportunities multiply; he loses his moral perspective; he becomes money mad; finally, he is willing to go to any length to accomplish his desires. It is this particular form of evil that we are striking at in these articles of impeachment against Judge Archbald.

The testimony in this case discloses a long series of acts of misconduct on the part of the judge along certain lines, all looking to concessions, money, agreements, and commissions. By his constant dickering, trading, and trafficking with the railroad companies and with litigants in his court, and especially with those great interstate railroad companies that at the very time he was carrying on these negotiations had suits pending in the Commerce Court, of which he is a member, Judge Archbald has scandalized the high office he holds; he has soiled with coal dust the white ermine he wears; he has degraded his standing and reputation in the estimation of the American people, and has been guilty of gross improprieties which, in the judgment of the managers, warrant his impeachment.

Mr. President, I have not time to discuss the law governing impeachments in general nor to go further into the facts of the case, but I want to state briefly, in conclusion, as clearly and as concisely as I may, the position of the managers in regard to the law of this case.

It is the contention of the managers on the part of the House of Representatives that acts of misconduct need not be indictable in order to warrant impeachment. We insist that that is peculiarly so in the case of judges of United States courts. Judges hold their offices during good behavior. It is a popular fallacy that Federal judges are appointed for life. They are not. They are appointed to hold their offices during good behavior. Misbehavior is the antithesis or opposite of good behavior; and it is the contention of the managers that any form of misconduct on the part of a judge which negatives good behavior, the condition upon which he is entitled to continue in office under the Constitution, constitutes a public offense, is violative of the Constitution, and warrants his impeachment, and that it is not necessary that we should show that he violated any criminal statute in order that he may be arraigned before this high tribunal by the House of Representatives and tried for high crimes and misdemeanors under the Constitution.

It is conceded on all hands that to violate a Federal statute would be an impeachable offense. Then, upon what principle of legal construction, upon what rule of logic, reason, or common sense, can it be successfully maintained that to violate the Constitution itself or a plain requirement of the Constitution is not an impeachable offense under the law? What is a crime or misdemeanor? Any act of omission or commission for which the law has prescribed a penalty. This is elementary. Acts of misconduct on the part of judges, such as I have been describing, are acts for which the law, the Constitution itself, has prescribed a penalty. The penalty prescribed is removal from office, and the remedy in all such cases is by impeachment for high crimes and misdemeanors under the Constitution.

Mr. Manager CLAYTON. Mr. President, Mr. Manager FLOYD has occupied an hour and five minutes of the hour and nine minutes allotted to him. Mr. Manager HOWLAND will now address the Senate for 45 minutes, plus the 4 minutes not used by Mr. Manager FLOYD, if he so desires.

Mr. Manager HOWLAND addressed the Senate. After having spoken for some time,

The PRESIDENT pro tempore. The hour of 6 o'clock has arrived, the hour which, under the order of the Senate, concludes the sitting of the Senate in consideration of the articles of impeachment.

[Mr. Manager HOWLAND's speech is printed entire in proceedings of January 9, 1913.]

Mr. Manager CLAYTON. I understood the ruling to be that 15 hours would control rather than the mere matter of days, and that that was the interpretation this morning of the order.

Mr. President, I wish to say that under the arrangement for the apportionment of time 21 minutes remain for Mr. HOWLAND and 2 hours and 30 minutes for the concluding argument on the part of the managers.

The PRESIDENT pro tempore. The Chair will announce that, under the order, the Senate sitting for the consideration of the articles of impeachment stands adjourned until 1 o'clock to-morrow.

After the transaction of some routine business, which appears elsewhere under the appropriate heading,

Mr. GALLINGER. I move that the Senate adjourn.

The motion was agreed to; and (at 6 o'clock and 4 minutes p. m.) the Senate adjourned until to-morrow, Thursday, January 9, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January 8, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

O Thou who hast ever been our refuge and our strength, our God and our Father, continue Thy blessings unto us as individuals and as a people, that we may press forward to greater victories and greater achievements, and thus prove ourselves worthy of the mental, moral, and spiritual gifts with which Thou hast endowed us. And Thine be the praise forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

RESIGNATION FROM A COMMITTEE.

The SPEAKER laid before the House the following resignation of Mr. FLOOD of Virginia as chairman of the Committee on the Territories:

WASHINGTON, D. C., *January 8, 1913.*

Hon. CHAMP CLARK,
Speaker House of Representatives.

DEAR SIR: I herewith tender my resignation as chairman of the Committee on the Territories of the Sixty-second Congress, to take effect immediately.

Very truly, yours, H. D. FLOOD.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

QUESTION OF PERSONAL PRIVILEGE.

Mr. CLARK of Florida. Mr. Speaker, I rise to a question of personal privilege and ask that the Clerk will read the article in the Washington Herald of yesterday around which the blue pencil has been marked.

The SPEAKER. Without objection, the Clerk will read.

The Clerk read as follows:

"There are Senators and Representatives occupying seats in Congress to-day who have allied themselves with real estate sharks in this city to fleece the Government of hundreds of thousands of dollars by seeking to sell to it large areas of land in out-of-way places for public park purposes, some of which are in ravines so deep that the Capitol could be set in them and you could not see the Indian which surmounts its dome."

This was the statement made last night by Representative FRANK CLARK of Florida in a speech at the mass meeting of the East Washington Democratic Association in Donohue's Hall, 314 Pennsylvania Avenue SE.

Mr. CLARK of Florida. Mr. Speaker, if this publication referred only to me and reflected only upon me, I think I would not ask the time of this House to mention it. But it puts me in the attitude as a Member of this House of arraigning not only Members of this body, but also Members of another branch of the legislative department of this Government, and of charging them with the gravest of crimes.

I desire to state, Mr. Speaker, that not one word of truth is contained in that statement. I desire to say that not a single Washington newspaper was represented at that meeting, save the Washington Star, and the reporter of that paper gave about as accurate an account of the meeting as is usually given by reporters of newspapers.

I want to say, Mr. Speaker, that I have the highest respect for the legitimate, honest press of this country, but I have absolutely no respect for the yellow variety, of which this Washing Herald seems to be a very striking example.

What I did say, Mr. Speaker, was this, and I say it now—and the CONGRESSIONAL RECORD supports every word of it—I did say that the District of Columbia has practically no government; that it has three commissioners, appointed by the President, not responsible in any sense to the people of the District. And I did say that the real estate sharks, according to my observation, after eight years of service in this city, were controlling the destinies of this city. I did say that frequently in bills there come before this House propositions to buy waste places in out-of-the-way locations for park purposes, and I